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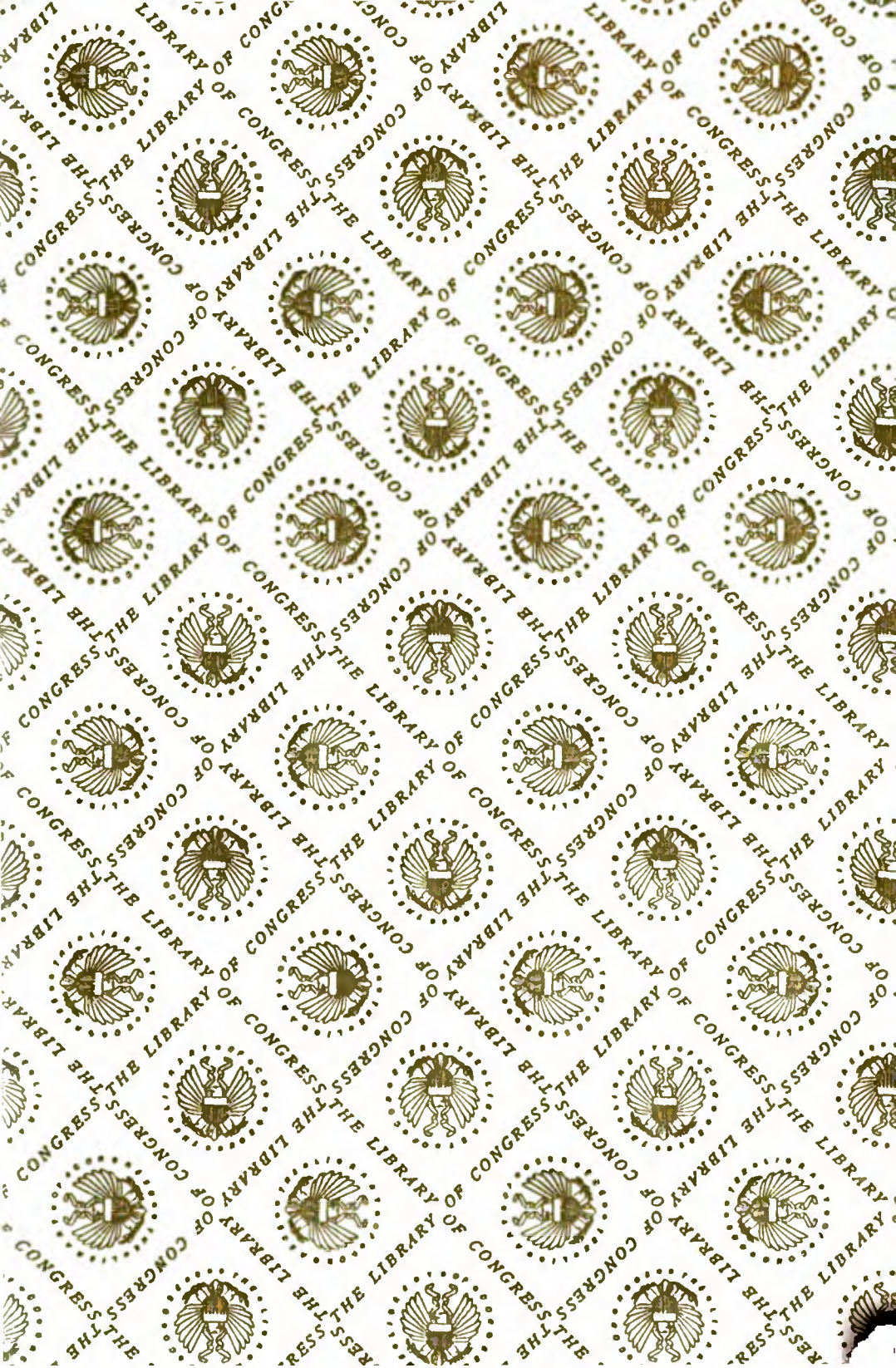
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COLLECTION OF DEBTS OWED THE UNITED STATES

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 4614

COLLECTION OF DEBTS OWED THE UNITED STATES

JUNE 10, JULY 14, 15, 1982

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COLLECTION OF DEBTS OWED THE UNITED STATES

THURSDAY, JUNE 10, 1982

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS, COMMITTEE ON THE JUDICIARY,

Washington, D.C.

The subcommittee met, pursuant to notice, at 9:05 a.m., in room 2226 Rayburn House Office Building, Hon. Sam B. Hall, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Hall, Mazzoli, Moorhead, Kindness, and McClory.

Also present: William P. Shattuck, counsel; Janet S. Potts and James Wade Harrison, assistant counsel; James B. McMahon, associate counsel; and Florence McGrady, legal assistant.

Mr. HALL. The Subcommittee on Administrative Law and Governmental Relations will come to order. Today we will receive testimony on H.R. 4614, to increase the efficiency of Government-wide efforts to collect debts owned to the United States and to provide additional procedures for the collection of debts owed the United States.

[A copy of H.R. 4614 follows:]

97TH CONGRESS
1ST SESSION

H. R. 4614

To increase the efficiency of Government-wide efforts to collect debts owed to the United States and to provide additional procedures for the collection of debts owed the United States.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 1981

Mr. DANIELSON (for himself, Mr. MOORHEAD, and Mr. MCCLORY) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To increase the efficiency of Government-wide efforts to collect debts owed to the United States and to provide additional procedures for the collection of debts owed the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Debt Collection Act of 1981".

AMENDMENT TO TITLE 18 OF THE UNITED STATES CODE

PROTECTION OF FEDERAL DEBT COLLECTORS

SEC. 2. Section 1114 of title 18 of the United States Code is amended by striking from the end of the section "shall be punished as provided under sections 1111 and 1112 of this title." and adding at the end thereof the following: ", or any officer or employee of the United States or any agency thereof designated to collect or compromise a Federal claim in accordance with the Federal Claims Collection Act of 1966 or other statutory authority shall be punished as provided under section 1111 and 1112 of this title.".

AMENDMENT TO TITLE 28 OF THE UNITED STATES CODE

CLARIFICATION TO THE STATUTE OF LIMITATIONS FOR ADMINISTRATIVE OFFSET

SEC. 3. Section 2415 of title 28 of the United States Code is amended by adding the following subsection (i):

"(i) the provisions of this section shall not prevent the United States or an officer or agency thereof from collecting by means of administrative offset at any time, any claim of the United States or an officer or agency thereof from money payable to or held on behalf of an individual. Whenever the head of an agency or his designee attempts to collect a claim of the United States under section 3(a) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(a)), he shall prescribe regulations and establish standards for the exercise of such

administrative offset based on the best interest of the United States, the likelihood of collecting by such offset, and the cost effectiveness of carrying an open claim beyond six years.".

AMENDMENTS TO THE FEDERAL CLAIMS COLLECTION ACT OF 1966

INTEREST AND PENALTY ON INDEBTEDNESS TO THE UNITED STATES

SEC. 4. Section 3 of the Federal Claims Collection Act of 1966 (31 U.S.C. 952) is amended by adding the following new subsection:

"(d)(1) Except as provided in paragraph (3), the head of an agency or his designee shall charge a minimum annual rate of interest on outstanding debts equal to the average investment rate for the Treasury tax and loan accounts for the twelve months ending with September each year, rounded to the nearest whole per centum. The Secretary of the Treasury or his designee shall publish such rate each year not later than October 31 and shall become effective on the first day of the next calendar quarter. Quarterly revision of such rate is authorized when the average investment rate for the twelve months end of each calendar quarter, rounded to the nearest whole per centum, is greater or less than the existing published rate by two hundred basis points.

"(2) Except as provided in paragraph (3), the head of an agency or his designee shall assess charges to cover the addi-

tional costs of processing and handling delinquent claims and shall assess a penalty charge, not to exceed 6 per centum per annum, for failure to pay any debt more than ninety days past due.

"(3) Interest and penalty charges under paragraphs (1) and (2) do not apply if a statute, a provision of regulation required by statute, a loan agreement or contract either prohibit the charging of interest or penalty or explicitly fix the charges for interest or penalty. The head of an agency or his designee may promulgate regulations identifying circumstances appropriate to waive collection of interest and penalties charges in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General. Waivers in accordance with such regulations shall constitute compliance with the requirements of this subsection. This subsection shall not apply to any claim under a binding contract executed before the effective date of this subsection.".

SERVICE OF SUMMONS

SEC. 5. Section 3 of the Federal Claims Collection Act of 1966 (31 U.S.C. 952) is amended by adding the following new subsection:

"(e) Service of legal process brought for the collection of a debt due and owing the United States in accordance with this statute or other statutory authority shall be accomplished

in accordance with the Federal Rules of Civil Procedure by certified or registered mail with return receipt requested, or in such manner as the court, upon motion without notice, directs if service is otherwise unpracticable under the Federal Rules of Civil Procedure of other provisions of statute.".

CONTRACTS FOR COLLECTION SERVICES

SEC. 6. Section 3 of the Federal Claims Collection Act of 1966 (31 U.S.C. 952) is amended by adding the following new subsection:

"(f) Notwithstanding the provisions of any other law governing the collection of claims owed the United States, except for collections of unpaid or underpaid debts under the Internal Revenue Code, United States Code, and the following, the head of an agency or his designee may enter into a contract with any person or organization under such terms and conditions as the head of the agency or his designee considers appropriate for collection services in recovering indebtedness owed to the United States. Any such contract shall include provisions specifying that the head of the agency or his designee retains the authority to resolve disputes, compromise claims, terminate collection action, and initiate legal action and that the contractor shall be subject to the Privacy Act of 1974, section 552a of title 5, United States Code, and, when applicable, to Federal and State laws and regula-

tions pertaining to debt collection practices including the Fair Debt Collection Practices Act.".

Mr. HALL. Our witnesses today will be Mr. Joseph Wright, the Deputy Director, Office of Management and Budget; the Honorable Jim Jeffords—I do not see Jim here as yet; and other witnesses. We will commence these proceedings with the Office of Management and Budget, Mr. Joseph Wright. You may come forward and bring those people who are with you. Identify them for us, please.

TESTIMONY OF JOSEPH R. WRIGHT, JR., DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, ACCOMPANIED BY HAL STEINBERG, ASSOCIATE DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET; JOHN PRESSLY, ASSOCIATE DEPUTY GENERAL COUNSEL, VETERANS' ADMINISTRATION

Mr. WRIGHT. Thank you, Mr. Chairman.

With me today are Mr. Hal Steinberg, who is the Associate Director for Management at OMB, and Mr. John Pressly, who is the Associate Deputy General Counsel at the Veterans' Administration.

I am delighted to appear before you today to discuss the Government's debt collection program and to urge your support for H.R. 4614, which is the Debt Collection Act of 1981. With your permission, Mr. Chairman, I would like to submit my testimony for the record and very simply highlight the major points before answering questions.

Mr. HALL. Without objection it will be so ordered.

Mr. WRIGHT. Thank you very much.

As you know, one of the major problems in achieving economic reform is the current amount of debt that is owed the Federal Government. The $239 billion that was owed the Government at the end of September 1981 was a 37-percent increase over what was owed that 2 years earlier. Of that amount, $33.5 billion is delinquent or in default, which is a 32-percent increase over what was delinquent of 2 years earlier. Almost half of that is over 6 months past due. Over $1.5 billion was written off in fiscal year 1981, which is a 57-percent increase over what was written off 2 years earlier.

Mr. Chairman, these numbers are 6 months old today and because of the current recession I would fully expect further increases in delinquencies and defaults. In 1981, the interest costs of carrying those delinquencies was $5 billion, or almost $14 million a day. If the present trends continue, the total debts owed to the Government could increase to over $390 billion and the delinquencies from those debts could increase to over $48 billion by the end of fiscal year 1984.

We have recognized the seriousness of these problems and 24 Federal agencies, which account for over 95 percent of the debts owed the Government, have already initiated comprehensive programs to improve their credit management and debt collection practices. We estimate the savings could be $1.5 billion in this fiscal year and $4 billion in the next fiscal year.

The savings will result from three primary activities: First, administrative initiatives already under way, as I mentioned; second, the enactment of debt collection legislation now under considera-

tion by the Congress; and, third, a major effort to recover delinquent taxes.

Mr. Chairman, administrative actions alone will not solve our debt collection problems. Restrictive Federal laws that prevent the use of collection tools and techniques that are used by the private sector must be amended. We ask that you and the committee support the legislative remedies in H.R. 4614 that will specifically allow agencies to: One, increase protection of Federal debt collectors; two, clarify the statute of limitations; three, assess interest penalties and administrative charges on nontax debts due to the Government; four, increase our ability to serve summons; and, five, contract for private sector collection services.

Other legislation which has been proposed would also allow agencies to refer credit information on delinquent debtors to credit bureaus and to offset the salaries of Federal employees to satisfy their delinquent debts owed the Government.

I guess in summary, Mr. Chairman, what I would like to say is that the legislative changes that are contained in H.R. 4614 and the complement of any bills now pending in the House and the Senate are, in our minds, essential to strengthen the debt collection program in the Federal Government and I urge the Congress to consider and enact these initiatives as soon as possible so that we then can move quickly to reduce the amount of debt owed to the Government.

Mr. Chairman, that concludes my prepared statement. I would be more than happy to answer any questions you have.

[The prepared statement of Mr. Wright follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

STATEMENT OF JOSEPH R. WRIGHT, JR.
DEPUTY DIRECTOR
OFFICE OF MANAGEMENT AND BUDGET
SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENT RELATIONS
OF THE COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES
ON THE DEBT COLLECTION ACT OF 1981
H.R. 4614

June 10, 1982

Introduction

Thank you, Mr. Chairman, for the opportunity to appear before you today to discuss the Administration's efforts to improve the government's debt collection program and to urge your support for H.R. 4614, the Debt Collection Act of 1981. Collecting monies owed the government is essential to achieving the President's economic recovery goals.

The Problem

When the Administration began to assess the many major problems it faced in achieving economic reform, one of its first discoveries was the enormity of the amount of debt owed the government. Specifically --

- o An estimated $239 billion was owed the government as of September 30, 1981. This represents a 37 percent increase over the $175 billion that was was owed the government at the end of FY 1979.

Executive Branch Actions

Major action ia required if we are to atem the increases in total debts owed the government and in delinquent debts. OMB's Debt Collection Staff estimatea that if present trends continue, total debts owed the government will increase to over $390 billion and delinquencies will increase to $48 billion by the end of FY 1984.

Preaident Reagan has recognized the seriousness of our debt collection problems and has committed the Administration to an aggressive debt collection program. The Office of Management and Budget haa been working closely with the agencies in carrying out the Preaident's intent. Twenty-four Federal agencies, which account for over 95 percent of the debta owed the government, have already initiated comprehensive programs to improve credit management and debt collection practices. Theae programa are directed toward:

- o reducing the current backlog of delinquent debt;
- o preventing unneceasary new delinquencies from occurring; and,
- o quickly recovering new delinquenciea as they occur.

We expect substantial savings as a result of the increased emphaais on debt collection. The Preaident'a FY 1983 budget includea total debt collection aavings of $1.5 billion in FY 1982 and $4.0 billion in FY 1983. Included in theae figures are savings resulting

from administrative initiatives already underway in the agencies, projected savings from the enactment of debt collection legislation now under consideration by Congress, including H.R. 4614, and expected savings from a major effort to recover delinquent taxes. This last effort includes a substantial increase in personnel dedicated to recovering delinquent taxes and the automation of collection procedures to increase productivity.

We are beginning to see the results of the administrative actions we have taken to improve our debt collection efforts, especially in those agencies where top management has taken an active interest in debt collection. Some of the specific improvements being made by the agencies include the following:

- o The Veterans Administration (VA) will no longer automatically guarantee home loans made by private lending institutions. These institutions are now required to check with VA to determine if a loan applicant is delinquent on other VA loans or if the applicant owes the VA as a result of the erroneous payment of benefits. If a delinquent debt is discovered, the applicant will generally be required to repay the debt prior to approval of the home loan.

- The Justice Department has designated approximately 70 attorneys in five agencies as Special Assistant U.S. Attorneys in order to expedite the prosecution of delinquent debts. For example, the Small Business Administration currently has 20 Special Assistant U.S. Attorneys to assist in the litigation of over 5,000 debt cases valued at over $380 million. In the Department of Interior, 10 attorneys in the Office of Surface Mining have been designated as Special Assistant U.S. Attorneys in order to facilitate the resolution of over $15 million in outstanding debts.

- Under a revised reporting system that went into effect on October 1, 1981, the Treasury Department is collecting, on a quarterly basis, information never before available on:
  - total receivables
  - the amount and age of delinquent receivables
  - interest assessed and collected on delinquent accounts, and
  - the number and value of accounts referred to GAO and Justice for further collection.

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Our analysis of the data for the first quarter of FY 1982 indicated that some agencies continue to experience problems in providing reliable and accurate financial data. OMB's Debt Collection Staff has been working with the agencies to improve the quality of the data submitted under the revised reporting system.

- The Department of Education has proposed changes to the regulations governing the National Direct Student Loan (NDSL) program. The changes would allow the Department to base the amount of new money it makes available to a college or university on the school's performance in collecting its outstanding loans. Schools with delinquency rates exceeding 25 percent would not receive new money under the proposed regulations. The amount of new money available to schools with delinquency rates between 10 and 25 percent would be reduced in proportion to the amount they have failed to collect.

Debt Collection Legislation

We are certain, however, that administrative actions alone will not solve the Government's debt collection problems. Restrictive Federal laws that prevent the use of collection tools and techniques used effectively in the private sector must be amended in order to eliminate the disincentives that presently exist in the Government's debt collection program.

Mr. Chairman, we ask that you and the Committee support legislative remedies that will, among other things, allow agencies to:

- o Contract for private sector collection services;
- o Refer credit information on delinquent debtors to credit bureaus;
- o Assess interest, penalties and administrative charges on non-tax debts due the Government; and,
- o Offset the salaries of Federal employees to satisfy their delinquent debts owed the Government.

Five of the legislative issues which are essential to our overall debt collection effort are included in H.R. 4614. I would like to briefly discuss the importance of each of these issues.

Protection of Federal Debt Collectors

Section 2 of the bill would make it a Federal criminal offense to assault a Federal employee collecting debts owed the Government. Attempts to collect outstanding debts can be risky undertakings. These situations are not pleasant for either the debtor or the

Government collector. Government employees have been the subjects of death threats or threats of bodily harm to themselves and members of their family. A number of employees have, in fact, been physically assaulted while carrying out their duties. In 1977, an SBA employee was murdered in Chicago while engaged in collecting an SBA loan.

To date, Federal law has taken a piecemeal approach to ensuring statutory protections and appropriate criminal sanctions for Government employees assaulted or killed in the line of duty. While some Government employees, including those of the Internal Revenue Service and the Department of Justice, are protected by Federal statute, the employees of other agencies are not similarly protected. It would only seem reasonable that all Federal employees engaged in debt collection should be given equal protection under Federal law and this is the intent of H.R. 4614.

Clarification to the Statute of Limitations for Administrative Offset

Section 3 would allow agencies to collect delinquent debts by administrative offset beyond the six year statute of limitations.

A Justice Department ruling currently prevents agencies from using this effective collection technique. As a result, the government's ability to collect debts by offsetting retirement benefits is seriously restricted, since entitlement to retirement benefits often accrues more than six years after a debt is incurred. The Comptroller General has formally disagreed with the Justice

ruling, and has indicated that Congressional action is necessary in order to resolve the issue. Public Law 96-466 already allows the Veterans Administration to collect debts through the use of administrative offset beyond the six year statute of limitations.

An agency would only use the administrative offset in situations where there is a chance of collecting a debt in a cost effective manner. If a decision is made to offset a debt, the Federal Claims Collection Standards would require the agency to give the debtor prior notification of the intent to offset; an opportunity to request reconsideration of the debt, or if provided for by statute, waiver of the debt; and an explanation of the debtor's rights. An offset would not occur until the differences between the debtor and the agency were resolved. These protections will ensure that only valid debts would be offset.

Interest and Penalty on Indebtedness to the United States

Section 4 of the proposed legislation would require agencies to charge a minimum annual rate of interest on delinquent debts equal to the average rate for the Treasury tax and loan accounts. This rate is, in effect, a market rate and would allow the government to recover the cost of carrying the debt. Were the legislation currently in effect, agencies would be required to charge an interest rate of 17 percent on delinquent debts, which would result in additional revenues of approximately $595 million to the Treasury this year.

The legislation would also allow agencies to assess charges to cover the additional costs of processing and handling delinquent claims, and a penalty charge not to exceed 6 percent per annum on delinquent debts more than 90 days past due. This would amount to approximately $96 million this year. The assessment of penalties is commonly used in the private sector to punish debtors who unreasonably delay payment of overdue debts and will be very effective in hastening the collection of debts owed the Government. The legislation would also allow agencies to waive interest, penalties and administrative charges in hardship situations.

Service of Summons

Section 5 would permit U.S. Attorneys to use the mail, State and local law enforcement officials, or private contractors to serve legal documents in the litigation of debt cases, including foreclosure actions.

Due to the increasing workload of U.S. Marshals, there is a growing problem in obtaining timely service of summons in Federal debt cases. As a matter of necessity, U.S. Marshals must give priority to serving papers on criminal cases, protecting Federal judges and other activities. Rather than detract from the performance of these critical activities, we are proposing that U.S. Attorneys be allowed to use other means to serve process on debt collection issues.

The proposed legislation is consistent with the recommendations made in a recent GAO report. The report found that using Marshals to routinely serve civil process that does not require a law enforcement presence is costly and prevents private enterprise from performing a function it could be authorized to conduct. The report also concluded that the increased use of certified mail to serve process would reduce the average amount of resources necessary to perform this function. The proposed legislation would enable U.S. Attorneys to use the most efficient and cost effective means of serving process on debt cases.

Contracting for Collection Services

Section 6 of the bill will allow agencies to contract with private firms for the collection of Government debts. The General Accounting Office (GAO) recently reversed a longstanding policy which prevented agencies from contracting with private firms for debt collection services. Because there has been some question about the legality of GAO's reversal, we feel that legislation is necessary to resolve the issue.

With the exception of IRS, most agencies have neither the resources nor the expertise to perform any collection activity other than the initial dunning of debtors. Consequently, we feel the use of private collection agencies would be very cost effective. Private firms could be used when:

- the ability of the debtor to repay the debt has been determined;

- the debt is not being contested by the debtor; and,

- the only other available options are writing off the debt or referring it to the Justice Department for litigation, both of which are very costly.

Under the proposed legislation, agencies would retain ultimate control and responsibility over their debts, including the authority to compromise amounts due, terminate collection activity, and resolve issues relating to the validity of the debt. The legislation would also subject private collection firms to the provisions of the Privacy Act, thereby offering protection to Government debtors. I would like to point out that the Department of Education, which already has statutory authority to use private collection agencies, has found contracting for collection services to be a cost effective means of recovering delinquent student loans.

Timely Enactment

Mr. Chairman, the enormity of the government's debt collection problems is staggering. One of the primary reasons for the situation is the failure of agencies to aggressively pursue the collection of its debts. Creditors who make their presence felt are generally the first to collect from their debtors, and as of now, the government is probably the nation's most timid creditor.

This Administration and the Congress should not tolerate the less than professional attitude which agencies have historically taken toward debt collection. We have already taken significant administrative action to improve the government's debt collection performance, but we must have new legislative authority to supplement our efforts.

The legislative changes contained in H.R. 4614 and in complementary bills now pending in the House and Senate, including H.R. 4613, H.R. 2811, H.R. 5471 and S. 1249 are essential to a strengthened debt collection program for the Federal Government. We expect that if fully enacted, the Administration's debt collection proposals will result in the recovery of an additional amount of approximately $500 million in delinquent debt.

I urge the Congress to consider and enact these legislative initiatives as soon as possible so that we can move quickly to reduce the amount of delinquent debt owed the Government and help restore America's confidence in its Government.

Mr. Chairman. This concludes my prepared statement. I will be happy to answer any questions you may have.

Mr. HALL. Thank you, Mr. Wright. Mr. Steinberg and Mr. Pressly, do you have any comments?

Mr. STEINBERG. No, sir.

Mr. PRESSLY. No, sir.

Mr. HALL. Of the amount estimated, $239 billion, that is owed the Government as of September 30, 1981, how much of that, or what percentage of that sum is represented by people who work for the Federal Government?

Mr. WRIGHT. The only information we have are estimates provided by the Veterans' Administration [VA] and the Education Department [ED]. These agencies matched their debtor records against Federal civilian and military personnel information. VA identified as estimated 66,000 Federal employees who owed VA approximately $37 million while ED identified over 17,600 Federal employees who owed approximately $20 million. We do not have similar estimates from other agencies.

Mr. STEINBERG. That is one of the problems in the data systems that we are addressing now. The agency data systems do not break down by the place of employment, so we do not have the numbers as to what percentage of the Government's debtors are Federal employees.

Mr. WRIGHT. Mr. Chairman, we do not even have a good update on those numbers that were 6 months old because of the poor information systems that have been in place and that is particularly disconcerting, right now, when you can almost be assured those portfolios are moving because of the economic conditions in the country—and when I say moving, I mean getting worse.

Mr. HALL. What do you mean by an "administrative offset"?

Mr. WRIGHT. An administrative offset, Mr. Chairman, is one where you basically have a requirement to make payments to the individual or the corporation and you identify that they owe a debt to the Federal Government and you offset future payments to satisfy that debt.

Mr. HALL. Would H.R. 4614 authorize administrative offsets against State and local governments? Isn't there a Supreme Court case pending now where that question is at issue?

Mr. WRIGHT. I believe it would, Mr. Chairman.

Mr. HALL. Would H.R. 4614 authorize administrative offsets against corporations since the bill's terms provide for offsets against individuals?

Mr. WRIGHT. Yes, sir.

Mr. HALL. Why should there be no statute of limitations on administrative offsets? Now you are talking about a 6-year limitation on the debt itself, the collection of that debt, or advocating that.

Mr. WRIGHT. We are advocating an extension beyond 6 years, Mr. Chairman.

Mr. HALL. With reference to the offset?

Mr. WRIGHT. Yes, sir. And the reason is, let me just use an example, if I may.

If you take a student loan, in many cases the payment will not occur or is not required until after that statute of limitations or would extend beyond the 6 years. And in some cases where you cannot even identify the location or the address of the debtor it could take that period of time before the payment even starts

coming in and the statute of limitations, if it is 6 years, would apply and you would not be able to go ahead and recover the debt.

In other cases you have, where the VA has also some loans that would apply on that. In terms of retirement you have some retirement benefits. Six years simply does not apply to debt collection.

Mr. HALL. Well, are you advocating that the statute of limitations of 6 years be wiped out and that there be no statute of limitations on these claims?

Mr. WRIGHT. Yes, sir. However, agencies would use this authority only when there is an opportunity to collect a debt in a cost-effective manner.

Mr. HALL. Do you know of any other areas of Government where there is no statute of limitations?

Mr. PRESSLY. Yes, sir, Mr. Chairman. In the Veterans' Administration we have no statute of limitations for administrative offset. This was contained in legislation enacted in October of 1980.

Prior to that time, one of the largest problems at the VA was the location of the debtor. We had a situation in the education program where there were many overpayments of educational benefits. For example, the veteran is in school, he terminates, the VA is notified and an overpayment is created. Since he left school, there was no way to locate the individual.

IRS had and continues to have certain prohibitions on the use of taxpayers addresses. So for a period of time in the mid to late seventies the VA was in limbo as far as locating the veteran. We now have the ability to offset beyond the 6-year period and we also have developed a method to use IRS addresses to a certain extent.

Mr. HALL. A couple of days ago in another committee we had some hearings, in the Veterans' Affairs Committee. We had a hearing dealing with the amount of money that has been paid to deceased people. They told us that there is probably $100 million outstanding today on amounts that have been paid to the deceased.

Now do you know how long some of those obligations have been outstanding?

Mr. PRESSLY. Mr. Chairman, I was at that hearing. The audit of which you are speaking was conducted by the Inspector General and I believe he addressed that question and will get back with you with a more detailed answer. In answer to your question, I do not know the period of time, whether it is 1 year or 6 months, that the audit covered.

The situation arises where the VA is not notified when a veteran died. The only way we can tell if the veteran dies is when the next of kin or funeral home—whatever—applies for burial benefits or some other type of notification is received at the local level.

Mr. HALL. Now this $239 billion, Mr. Wright, that you mentioned, we have earmarked approximately $100 million with VA. What other agencies owe the balance of that $239 billion?

Mr. WRIGHT. You have got five agencies, Mr. Chairman, that basically represent 80 percent of those receivables.

Mr. HALL. Five agencies represent what?

Mr. WRIGHT. Eighty percent of those receivables.

Mr. HALL. What agencies are the five?

Mr. WRIGHT. The Department of Agriculture is $94 billion, HUD is $15 billion, Treasury is $30 billion, AID is $18 billion, and the Export-Import Bank is $16 billion.

Mr. HALL. If you had to set up a time on those amounts, how old are those accounts from Export-Import Bank, for instance?

Mr. WRIGHT. Mr. Chairman, we do not have an aging on the accounts, unfortunately. That is part of the information that we are going after.

Mr. HALL. Well, why is it so difficult to be able to age an account from, say, the Export-Import Bank? Why could it not be just a relatively easy matter to call over there and ask them or write a letter, and ask them how much money is delinquent, by whom, how old is the delinquency? Can't you get that information?

Mr. WRIGHT. That is exactly what we are doing right now, Mr. Chairman. On the Export-Import Bank, I do not know how difficult it is right there because those are not consumer loans. Those are corporate loans.

Mr. HALL. They do not deal with but eight corporations, do they?

Mr. WRIGHT. We can probably go ahead and get the information for you from the Export-Import Bank.

Mr. HALL. It looks like that would be a relatively simple thing to find out which of these eight giant corporations owes that amount of money and how old that account is.

Mr. WRIGHT. Mr. Chairman, we would be more than happy to try to get that for the Export-Import Bank for you. When you get into the consumer portfolios, they just flat do not have that information yet and that is what we are going after right now.

Mr. HALL. Should H.R. 4614 provide that an agency give a debtor notice and a chance to oppose an offset before one is imposed?

Mr. WRIGHT. Yes, sir, absolutely.

Mr. HALL. Are claims to be treated differently than debts under this section?

Mr. WRIGHT. Once claims are agreed upon by the debtor and by the Government they are to be treated as debts. But once the notice or due process is given of the intent to offset, then the debtor should have the ability to request a hearing or to question the claim and have some type of a process.

Mr. HALL. A hearing before whom?

Mr. WRIGHT. Before the agency.

Mr. HALL. Could he appeal that to a court?

Mr. WRIGHT. That would be an administrative appeal.

Mr. HALL. I know, but after the administrative appeal do you think that that debtor should have a right to go to the court?

Mr. WRIGHT. Mr. Chairman, the debtor would have the right to go to the court, I would imagine, anyway, if they prefer to take that route. So I would not imagine the legislation would have anything to do with that.

Mr. HALL. How would this rate of interest be determined under section 4 of H.R. 4614?

Mr. WRIGHT. It would be—the rate of interest would be the tax and loan rate for the Department of the Treasury that they establish quarterly, Mr. Chairman. That would be an equitable rate that would be done across the country so that there would be the same interest rate that would be established across the board.

Now the penalty charges and the costs of collection would vary by agency and so there could be some differences there.

Mr. HALL. Under this section 4 interest, processing costs, and penalties are supposed to be assessed.

Mr. WRIGHT. Yes, sir.

Mr. HALL. Now how would your interest accrue on each of those items?

Mr. WRIGHT. You mean when would it start?

Mr. HALL. Yes.

Mr. WRIGHT. I would recommend, Mr. Chairman, that it would start once notification is given that interest charges will be applied if the payment is not received.

Mr. HALL. Do you believe that those interest charges should be changed at any point in time, or once they are fixed that they would stay that way?

Mr. WRIGHT. No, sir. I think that they should be fixed by the tax and loan rate, which would make it much simpler and just stay that way, because that could really get into a morass of all different types of interest charges for different types of loans across different types of states. That would be a mess.

Mr. HALL. Now section 6 deals with contracting out.

Mr. WRIGHT. Yes, sir.

Mr. HALL. What pay provisions would be included in contracts—a contingent or a flat rate?

Mr. WRIGHT. I would imagine, Mr. Chairman, that that could vary depending upon the portfolio. I personally would rather see a contingent because a flat rate does not allow for changes in the contract, depending upon the quality of the portfolio.

Mr. HALL. Now assuming, for instance, you had a person who was out attempting to collect a debt. That collector can only go so far without getting the approval of the Department; is that not correct, or the agency to whom that money is owed?

Mr. WRIGHT. Yes, sir. Normally when contracts are established between a collection agency and whether it be anybody in the private sector or, in this case, the Federal Government, you would establish a collection procedure beforehand.

Mr. HALL. With reference to that procedure, do you feel that a collector should have the right to compromise or settle a claim without getting the permission of the agency or the department?

Mr. WRIGHT. Mr. Chairman, the Federal Claims Collection Act requires agencies to retain ultimate responsibility for the collection of their debts, including the compromise of claims. This requirement would not be changed in any way by H.R. 4614.

Mr. HALL. Do you believe that you are going to get many people interested in this type work if they do not have the right to settle these claims without having to go get someone of higher authority to permit it?

Mr. WRIGHT. Our limited experience with contracting for collection services indicates there is sufficient interest in collecting Government accounts among private collection firms, even though these firms would not be given the authority to settle claims.

Mr. HALL. With reference to the Veterans' Administration let me ask one question that came up in a hearing that we had in Nash-

ville a few months ago. The question came up there with reference to collection of loans owing to the Veterans Administration.

My suggestion at that time was that in-house counsel who write letters to these people really do not always get the best results. For instance, a letter from a lawyer with the Veterans Administration or a letter from a lawyer with the SBA to an individual or a corporation or an entity stating that they are indebted to this agency in whatever sum maybe will get some results, but not too many.

My suggestion was that after a series of one or two letters that are written, if no results come forth, then turn that collection matter over to the U.S. attorney's office with instructions that they follow up with this. We were told at that time that any indebtedness in the amount of $600 or under is not pursued. They just write it off. And that accounts for literally millions of dollars that has been written off as uncollectable, merely because the letters that go out from the house attorneys are of really little effect.

I understood that they were going to attempt that, going to the U.S. attorney's office after these initial letters with no results from house counsel. Do you know anything about that procedure and whether or not it has worked or is working at this time?

Mr. PRESSLY. Mr. Chairman, you are absolutely correct in stating that the under $600 issue resulted in a large number of suspended files, a large amount of money that was just left turning on the computers with no action. That is one reason the VA has such a large number of overpayments.

The VA now has authority to litigate, with its attorneys, delinquent debts $1,200 and below, with Justice doing the $1,200 and above. As far as letter writing, there is some success with VA district counsels writing letters. With cases $1,200 and above, the U.S. attorneys, from what I understand, write appropriate letters. Also, they do actively pursue the $1,200 and above cases. However, as you understand, the U.S. attorneys do have an order of priority and debt collection certainly does not rank at the top, nor does it rank at the bottom. It depends, I am sure, on the workload in each office.

Mr. HALL. Well, has there been a policy or is there a policy now in any of the departments represented by you gentlemen where a sum of $600 or less is just written off and no effort is made to collect it?

Mr. PRESSLY. Mr. Chairman, as far as VA is concerned, we do not administratively write off cases unless you are talking about $20 or below.

Mr. STEINBERG. Mr. Chairman, there is a difference between writing off and making no attempt to collect it. Some of these provisions that we are seeking, such as the authority to offset the salary of a Federal employee, which is included in S. 1249, will help us to collect those debts under $600 because they are relatively easy to get and very inexpensive to get.

I might also add that another part of the President's debt collection program involves making sure that the debts do not build up again, and within the VA, for instance, we have a number of initiatives under way to do just that.

For instance, on the VA housing loans the banks are now instructed that they cannot just automatically grant the VA guaran-

tee without checking back to the VA to determine whether or not the applicant is in debt to the VA under VA education loans. We have more frequent reporting from the educational institutions that the student indeed is in school and is therefore entitled to the loan or to the grant.

Mr. HALL. Thank you very much. The gentleman from Kentucky, Mr. Mazzoli, is recognized.

Mr. MAZZOLI. Thank you very much, Mr. Chairman. I am new to this subject matter and I commend the Chairman for having these hearings and the administration for trying to collect the money that the taxpayers are owed, which is what it essentially amounts to.

I think the Chairman was asking a question a few moments ago about this new procedure and changes. Is there any track record? Can we show that we have been collecting money now, that the debts that were owed are now being brought up to date? People are becoming a little more alert to that?

Haven we seen any success out of this effort?

Mr. WRIGHT. You can see it, Congressman, right now in terms of the increased collections that we are getting with the agencies, but the numbers are really not going to be in until we get toward the end of this fiscal year.

Mr. MAZZOLI. It would be toward the end of the summer or fall when you might have some?

Mr. WRIGHT. Yes. You do have 24 agencies right now that do have improved collection processes in place. Again, one of the problems that we have had, as the chairman so rightly mentioned, is the information systems that we have are just terrible compared to those that exist in the private sector.

The only explanation that I can give from the executive branch is that over the years there has just never been any pressure to go ahead and collect Federal debts.

Mr. MAZZOLI. You anticipated my question. Looking over your predecessor administrations, have they all just been sort of nonchalant about this, or have they tried and given up because of some outside pressure? What do you believe, having studied what happened in earlier administrations?

Mr. WRIGHT. The only thing that I can say is if you get into the collection of some of these debts you also get into politics to a certain extent. You also are going against tradition where you are collecting debts where the Federal Government has not in the past. You are putting a discipline on the Cabinet departments that has not existed before. You are asking for information to be collected that has not ever been submitted to OMB before.

In other words, you are trying to break a trend and manage the Federal Government better and this just has not been done.

Mr. MAZZOLI. Let me ask you, do you find in the people, both careerists as well as appointees, in this administration, that you are finding a better receptivity to this, or are you finding the same kind of institutional problems that the previous administrations would have found?

Mr. WRIGHT. No, sir. I do not believe that we will have any problem at all in getting a response from the career civil servant or

from the agencies of improved debt collection systems. There simply has not been a priority placed on it before.

Mr. MAZZOLI. So you are dealing with pretty tractable people in all the various levels of government now?

Mr. WRIGHT. We are finding a good response to this effort. I do not mean to say that we have the systems in place or that we have the talent in place in order to be able to effectively manage these portfolios. We do not, sir, and that is one of the efforts.

What we are finding is an understanding that these numbers are serious and we are finding a priority that they must be collected.

Mr. MAZZOLI. The chairman asked some questions earlier on contracting out. I have not read all the previous material but I assume there is a question of whether you do it in-house or give it to private collectors. Can you give me some idea of where you stand on that or what your thinking is on that or what the administration position, if any, on that is?

Mr. WRIGHT. Well, the administration position is that once you have gone through your first stages of the collection process, as you get into the more seriously delinquent accounts you probably should contract out just like any other private lending institution or bank does.

At that stage you really need professionals, who make this their full-time business and who have the tools to be able to effectively collect the seriously delinquent debts. There has been a test that has been run by the Department of Education and they contracted out on a test basis, I believe last year, to two collection agencies, found out that they were effective and put out $1 billion worth of paper, I believe, in February of this year to two collection agencies and we are tracking them now.

Mr. MAZZOLI. $1 billion?

Mr. WRIGHT. Yes, sir. We are getting about $1 million a week in payments on that portfolio.

Mr. MAZZOLI. You are getting about how much?

Mr. WRIGHT. $1 million a week.

Mr. MAZZOLI. My God, $1 billion? What would you conceive to be the total? I came in late this morning. Did you testify about the number of dollars that are sitting out?

Mr. WRIGHT. Yes, sir. Now we have $239 billion in total receivables. Of that, $33.5 billion is delinquent. Of the $33.5 billion, around half of it is over 6 months delinquent. Now if that is your traditional consumer commercial paper, once you are 6 months delinquent you have a very high percentage of writeoff.

Mr. MAZZOLI. Just a second now. You say $239 billion was owed as of September 30, 1981, and how much of that is 6 months overdue?

Mr. WRIGHT. There would be about $15 billion.

Mr. MAZZOLI. About $15 billion, and when you use the 6-month period you are saying that at that point in-house methods and the usual routine of trying to follow up has probably been ineffective? Is that the idea?

Mr. WRIGHT. Yes, sir.

Mr. MAZZOLI. That is the cutoff date that you use to decide that it is now delinquent and you may need some special effort for collection.

Mr. WRIGHT. Depending upon the portfolio, but yes, that is the idea.

Mr. MAZZOLI. What do you mean by "portfolio"? What does that mean?

Mr. WRIGHT. I am sorry. That is the receivables that are owed to the lending institution.

Mr. MAZZOLI. So you are saying that it depends on the nature of the debt. When you say the portfolio, the cutoff date varies depending on certain kinds of debt. Less than 6 or 7 months might be applicable for other kinds of debt, is that correct?

Mr. WRIGHT. Yes, sir.

Mr. MAZZOLI. So depending upon the agency you are working with, you would have to tailor your approach.

Quickly, does the bill that we have before us have the flexibility that you are looking for woven into it?

Mr. WRIGHT. The bill that you have before you has most of it. There is some other legislation that has already been passed in the Senate and is in other bills in the House, for example.

Mr. MAZZOLI. Which would be melded together and would give you the kind of total package that you have to have?

Mr. WRIGHT. Yes. There are four different House bills that would match the Senate bill.

Mr. MAZZOLI. Well, my time has expired and I yield it back, but let me just say that as I go through my district and have town hall meetings, I think if there is any one thing that incenses people and just drives them strictly up the wall it is a government that has billions of dollars owed to it and seems to have a cavalier attitude about collecting that money, and on the other hand a government which, depending on the various agencies who look at it, will come down pretty hard on the neck of a decent, taxpaying, honest, patriotic American citizen.

You see, on the one hand they do not worry about billions of dollars. On the other hand, they come down on you if you owe them 5 cents. I think you are on the right track and I think that certainly Congress would be disposed to giving your administration and any successor administrations an opportunity to be able to collect money which the taxpayers are owed.

I mean, if there is some validity in lending money to students, and there is some question, but if there is, then certainly the students ought to pay it back. If there is some validity in letting money go out to doctors to become doctors and so forth because there is a public gain in that, then those people ought to pay the money back. It is like any other debt.

I think that the disposition of Congress would be to try to help you in this. Thank you, Mr. Chairman.

Mr. HALL. Thank you, Mr. Mazzoli. Mr. Moorhead of California.

Mr. MOORHEAD. Of this somewhere between $16 and $33 billion that is delinquent, what percentage of it is really collectable or how much has gone so long that you have no contact and it may never be collectable at all?

Mr. WRIGHT. Congressman, unfortunately, of the $33.5 billion that was delinquent at the end of last September, we do not have an aging on it, so it is our estimate that you have got around half that is 6 months or more. If that is so and if that half fits the tradi-

tional performance of a portfolio in the private sector, very little will be collectable. But we do not know yet.

Mr. MOORHEAD. Isn't one of the big problems that you are having in collection of the debt that the Republic has got the feeling in many areas that the Government does not really care and is not going to use any effort to collect it, so that they give the money to the person that is crying out for it the most and the Government is the lowest on the ladder and actually does not get the money?

Mr. WRIGHT. Congressman, I could not agree with you more. I believe that there is a perception out there that once you sign a contract on a loan with the Federal Government you do not have the same responsibility to pay it back like you would a private lending institution. That perception, I am sure, is causing many of the problems that we have had, along with the fact that we have not followed up on it.

The lender who was there first to say to whoever the debtor is that you owe me the money and should pay it back is normally the one who gets paid. I believe what we will find is that when this is contracted out to collection agencies that in some ways the quality of these portfolios will be better than we thought they were simply because of the fact that no one had ever asked the debtors to repay.

I think it is going to be a very interesting exercise that could probably be one of the best efforts that we have had between the Congress and the administration in a long time in terms of going after the past-due debts.

Mr. MOORHEAD. I think that rather than bringing in a lot of what is due now that you are going to stop people in the future from allowing themselves to become delinquent if they realize that there is going to be a firm policy that the Government is going to go after their money.

Mr. WRIGHT. And also hearings like we are having today are extremely helpful because these have not been held in the past and there has not been an interest on the Congress side or the administration's side of showing that we are going to be serious about this.

Mr. MOORHEAD. What I would be interested in, though, you said a while ago, the politics would influence the collection of a just debt. Can you give us an example or two of where politics would be involved in a thing like that?

Mr. WRIGHT. Sure, I would be happy to. I will give you just one that I was personally involved with. That is, the loan portfolio of the Economic Development Administration has a 40 percent delinquency rate. For a commercial portfolio that is probably one of the worst I have ever seen.

When we were initiating fairly tough collection procedures for both direct loans and the loan guarantee programs I was receiving calls all the time explaining to me that part of the responsibilities of EDA was not to go on ahead and collect on the debts that were outstanding to the Federal Government but to allow them to continue to roll over in order to protect jobs.

Well, if that is so, my answer was well, then, let us just go on ahead and provide that through a jobs plan, but do not hide it with a company loan. So we were getting pressures all the time not to collect debts.

Mr. MOORHEAD. Another area that I was interested in, and I think you alluded to earlier, how many of these obligations fit a category where people are just delaying the payment in order to take advantage of low interest rates and making a profit off of the fact that they can have that money out at much higher rates and benefit by the delay?

Mr. WRIGHT. I certainly believe that exists, Mr. Moorhead. I really do. As long as you are not, as a debtor, getting any pressure from the lender to repay the debt, I would imagine that that is occurring all over the country. That is why section 4 of H.R. 4614 is so important. By enabling agencies to charge prevailing interest rates, as well as assess penalties and administrative charges on delinquent debts, we would eliminate any financial incentive a debtor would have to delay a payment of his or her debts.

Mr. MOORHEAD. I know in some instances I have been told on the student loans by people that they borrowed the money and they did not really need it. They put it in the bank at 15-percent interest and they just held on to it as long as they possibly could because they are making money every month to keep.

In your testimony you indicate that there is some question about the GAO reversal of the authority to collect debt by Federal agencies. What are these questions?

Mr. WRIGHT. The Justice Department and the GAO had reversed an earlier interpretation of the Federal Claims Collection Act to permit Federal agencies to contract for debt collection services. This was done April 13 of last year.

So, therefore, we felt that it was important to come up and get legislation in order to clarify an agency's authority and give us the flexibility to allow the agencies to use outside contractors.

Mr. MOORHEAD. Do you believe that the Fair Credit Reporting Act provides sufficient privacy protection for Federal records, records held by the credit reporting agencies?

Mr. WRIGHT. Yes, sir, I do.

Mr. MOORHEAD. Do we have to make such agencies subject to the Privacy Act?

Mr. WRIGHT. Under H.R. 4614, private collection agencies doing collection work for the Government would be subject to the Privacy Act. This will insure that a debtor's rights are fully protected. I might also add that private collection agencies are also regulated by the Fair Debt Collection Practicies Act.

Mr. MOORHEAD. One thing I know some people might be concerned about is there are all kinds of collection agencies and there are all kinds of methods that are used to collect. If a contract debt collectors violates the law, what liabilities would the United States have through such an agency relationship?

Mr. WRIGHT. I believe we are liable for the action of any collection agency that is acting in our behalf. I know that is the way it is in the private sector. I would assume that it would be the exact same way with handling Federal debt, because we are the ones that are contracting for this to be handled by an outside source.

I will say that the—I do not know what the word for it is, but that community of collection agencies that handle themselves, I believe police themselves pretty darn well. They are very aware of the bad publicity that they received about 10 years ago. I was han-

dling contracts with collection agencies in my prior life over at Citicorp and we had very few problems.

Mr. MOORHEAD. Well, thank you very much.

Mr. WRIGHT. Certainly.

Mr. HALL. The gentleman from Ohio, Mr. Kindness, is recognized.

Mr. KINDNESS. Thank you, Mr. Chairman. Thank you, Mr. Wright. I am trying to test my memory a little bit. It seems to me that a year ago we were told that the debt owed to the Federal Government was in the neighborhood of $225 or $226 billion as of a preceding date, and I do not remember what the date was. According to your testimony, it would appear to be somewhere in between the ends of the fiscal years 1979 and 1980.

But at that point the delinquent debt was said to be in the range of $25 billion. This was at the time we were dealing with the legislation to which you referred, which passed in April, to allow the collection services to be available for them.

Do you have any knowledge of these other studies that came up with figures that I have referred to, approximately?

Mr. WRIGHT. I have seen many of the studies, Congressman. I have got a table that shows the amount of receivables and the delinquencies and, if I may just pick a couple of points off of this just for reference, in 1974, which I think is kind of interesting, the total receivables owed to the Federal Government was $78 billion.

At the end of 1981 it was $239 billion.

Mr. HALL. Would the gentleman yield for a moment? Is that information that you might place in this record?

Mr. WRIGHT. You bet. I would be happy to.

Mr. HALL. Without objection, it will be made part of the record.

[The information referred to follows:]

	Billions
Total receivables:	
1974	$78
1975	90
1976	108
1977	117
1978	140
1979	175
1980	202
1981	239
1982	282
1983	333
1984	390
Delinquencies:	
1979	25.3
1980	27.7
1981	33.5
1982	37.5
1983	42.2
1984	48.0

Mr. WRIGHT. We projected in 1984 it will be $390 billion.

Now the numbers you may be referring to were the 1979 numbers, in which there was $175 billion outstanding, with a $25 billion delinquency. In 1980 there was $202 billion outstanding, with a $27.7 billion delinquency. And then in 1981 were the numbers I referred to earlier—$239 billion outstanding with the $33.5 billion delinquent.

Mr. KINDNESS. And the source of those figures would be what?

Mr. WRIGHT. These are the numbers the Office of Management and Budget has picked up from each one of the agencies.

Mr. KINDNESS. And the manner of reporting that by the agencies, could you describe that for the record, please? Is that by special inquiry?

Mr. STEINBERG. When we started the debt collection project in 1979 these numbers were not routinely gathered, so the numbers in 1979 and prior were gathered as part of the project.

One of the things that we determined needed to be done as part of this debt collection project was collection of numbers. One of the first steps was to work with the Treasury Department to install a requirement that the agencies provide on a quarterly basis information concerning total receivables, aging of receivables, amount of writeoffs estimated, allowances for uncollectible debts and so forth.

This system started September 30, 1981.

Mr. KINDNESS. Does that system involve the breakdown of the debts owed by any categories?

Mr. STEINBERG. Right, within each agency. It is by the programs that that agency runs that would generate receivables.

Mr. KINDNESS. Are they separate? Well, by program, perhaps by definition this would occur, but are State and local government debts to the Federal Government separately identified?

Mr. STEINBERG. The kinds of debts of state and local governments are from audit findings, and they are broken out in those agencies that have grant programs.

Mr. KINDNESS. And it would appear that this legislation would apply to State and local government as well as to other persons, whether corporations or individuals?

Mr. STEINBERG. The interest and penalty provisions of H.R. 4614 do not amend or overturn section 203 of the Intergovernmental Cooperation Act, which provides that States shall not be held accountable for interest earned on grant-in-aid funds pending their disbursement.

Mr. KINDNESS. Is there an awareness at OMB of the case pending now before the Supreme Court relating to this problem of debt owed by State and local governments? I do not have great familiarity with that case, but if there is anything related to that case that you would like to have in the record, I would invite you to comment this morning.

Mr. STEINBERG. OK. We are aware of it as part of our work with the Inspector General and in regard to audit followup. It is my understanding that the outcome of that case will have no direct bearing on the provisions of the proposed legislation.

Mr. KINDNESS. Thank you, Mr. Chairman. I yield back.

Mr. HALL. I would like to ask a followup on one question that I mentioned earlier. With reference to the Export-Import Bank and the eight corporations, it was stated that substantial indebtedness is due by those corporations.

Mr. WRIGHT. Mr. Chairman, the Export-Import Bank at the end of September of last year, had $16.2 billion total receivables and they listed $542 million as delinquencies. Now I would imagine that that would be substantially more than those eight corporations.

Mr. HALL. You will get that information and make it a part of the record as to which of these corporations are delinquent and the amounts owing and the aging of those accounts?

Mr. WRIGHT. Yes, sir.

[The requested information follows:]

EXPORT-IMPORT BANK

CURRENT STATUS OF ACTIVE CREDITS
STATEMENT OF ARREARAGES
(Amounts stated to nearest whole unit)
September 30, 1981

Treasury Transaction Number	Agency Agreement Number	Cur. Ind.	Amount Due & Unpaid 90 Days or more		Total Amounts Due and Unpaid		Due Date of Oldest Arrearage	Footnote Code
			Principal	Interest	Principal	Interest		
Angola								
723101	103-03765	$	180,000	22,950	180,000	22,950	6/15/81	Z
Antigua								
670223	571-02422	$	750,000	202,808	750,000	202,808	03/15/73	S
Argentina								
610063	501-01547	$	173,671	77,630	173,671	77,630	04/30/66	Y
713097	501-03202	$	2,187	37,949	365,354	59,433	01/17/77	Z
Total Argentina		$	175,858	115,579	539,025	137,063		
Bolivia								
753961	509-06101	$			210,000	215,408	07/06/81	Z
Brazil								
733301	511-04449			117			08/05/80	T
733603	511-04577		810,770	194,989	810,770	194,989	01/17/77	X
743755	511-05022			253				
744001	511-05439			302		253	05/10/80	C
783058	511-06495			2,570		2,570	06/30/80	C
723970	511-10134			2,620		2,620	09/12/77	T
733137	511-10342		4,608	139	4,608	139	09/29/77	Z
733354	511-10621		8,484	1,913	8,484	1,913	12/28/73	T
773254	511-51220			41		41	08/11/80	C
Total Brazil		$	823,862	202,944	823,862	202,944		
Central African Rep.								
744531	113-05475		588,000	340,214	588,000	340,214	03/17/75	S
713147	113-E-03282		1,215,000	566,362	1,215,000	566,362	03/15/76	S
Total Central African Rep.			1,803,000	906,576	1,803,000	906,576		

EXPORT-IMPORT BANK

CURRENT STATUS OF ACTIVE CREDITS
STATEMENT OF ARREARAGES
(Amounts stated to nearest whole unit)
September 30, 1981

Treasury Transaction Number	Agency Agreement Number	Cur. Ind.	Amount Due & Unpaid 90 Days or more Principal	Amount Due & Unpaid 90 Days or more Interest	Total Amounts Due and Unpaid Principal	Total Amounts Due and Unpaid Interest	Due Date of Oldest Arrearage	Footnote Code
China (Taiwan)								
723752	220-04186	$	142,847	12,832	142,847	12,832	11/10/80	Z
Columbia								
640250	515-02205		94,882	8,528	94,882	8,528	04/30/80	Z
783032	525-06506				345,313	220,147	07/15/81	Z
Total Columbia		$	94,882	8,528	440,195	228,675		
Costa Rica								
763528	517-94002		39,967	17,860	39,967	17,860	07/01/81	Z
763529	517-94003		208,900	116,427	208,900	116,427	06/30/77	Z
Total Costa Rica		$	248,867	134,287	248,867	134,287		
Cuba								
510002	519-00493		18,736,832	19,963,709	18,736,832	19,963,709	12/15/60	Z
560016	519-00791		1,200,000	1,587,156	1,200,000	1,587,156	03/21/60	Z
560041	519-00828-1		23,569	32,187	23,569	32,187	07/2/59	Z
560046	519-00828-2		4,409	6,015	4,409	6,015	07/2/59	Z
570060	519-00960		16,290,000	21,314,663	16,290,000	21,314,663	06/15/60	Z
580047	519-01021		11,771	17,281	11,771	17,281	12/18/58	Z
Total Cuba		$	36,266,581	42,921,011	36,266,581	42,921,011		
Dominican Republic								
721992	523-E-04261		427,500		427,500		05/05/81	Z
734130	523-04751					539,044	08/10/81	Z
754072	523-06127					300,903	08/05/81	Z
793458	523-21301		12,845	3,927	12,845	3,927	05/04/81	Z
803001	523-21434				14,362	4,968	08/04/81	Z
Total Dominican Rep.		$	440,345	3,927	454,707	848,842		

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El Salvador								
783098	527,20458		3,741	145	3,741	145	04/30/81	Z
783297	527-20677		4,120	315	4,120	315	05/04/81	Z
783315	527-20698		10,000	2,293	10,000	2,293	05/04/81	Z
Total ElSalvador		$	17,861	2,753	17,861	2,753		
Guatemala								
753626	531-05776	$	130,857	31,836	261,714	57,936	02/02/81	Z
Iran								
650060	233-02238		5,102,353	572,792	5,102,353	572,792	09/17/79	Z
660288	233-02353		2,865,151	309,554	2,865,151	309,554	10/15/79	Z
683015	233-02534		12,989,448	1,560,869	12,989,448	1,560,869	10/01/79	Z
693044	233-02652		1,040,625	133,086	1,040,625	133,086	08/15/79	Z
703041	233-02763		2,126,748	259,664	2,126,748	259,664	08/15/79	Z
703072	233-02811		13,001,501	1,647,961	13,001,501	1,647,961	12/17/79	Z
703157	233-02956			46,865		46,865	02/15/79	Z
713010	233-03051		14,962,311	2,139,816	14,962,311	2,139,816	05/15/79	Z
713128	233-03272		13,702,500	1,678,087	13,702,500	1,678,087	09/17/79	Z
713114	233-03278		10,000,000	1,178,630	10,000,000	1,178,630	10/15/79	Z
713240	233-03433		897,427	105,773	897,427	105,773	10/15/79	Z
713314	233-03561		211,974	30,315	211,974	30,315	05/15/79	Z
723450	233-03915		2,979,448	733,059	2,979,448	733,059	11/13/79	Z
723433	233-04033		8,571,428	1,225,832	8,571,428	1,225,832	05/15/79	Z
723682	233-04089		21,293,833	2,740,779	21,293,833	2,740,779	08/10/79	Z
723727	233-04167		3,015,321	340,029	3,015,321	340,029	11/15/79	Z
723788	233-04214		28,571,428	3,372,211	28,571,428	3,372,211	10/11/79	Z
733594	233-04573		40,000,000	4,715,343	40,000,000	4,715,343	10/15/79	Z
734092	233-04721		85,714,284	11,680,626	85,714,284	11,680,626	07/16/79	Z

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763318	233-06313		38,485,000	7,810,134	38,485,000	7,810,134	07/02/79	Z
734264	233-11405		33,164	3,827	33,164	3,827	10/30/79	Z
734274	233-11406		49,328	6,438	49,328	6,438	07/30/79	Z
744259	233-12677		8,370	1,321	8,370	1,321	10/12/79	Z
744538	233-12876		19,380	3,358	19,380	3,358	07/18/79	Z
753005	233-13083		37,700	6,503	37,700	6,503	08/06/79	Z
753112	233-13135		16,500	2,682	16,500	2,682	08/08/79	Z
753185	233-13202		8,395	1,301	8,395	1,301	10/25/79	Z
753434	233-13428			861		861	08/07/75	Z
734312	233-13436			373		373	05/05/78	Z
753459	233-13454		44,690	7,395	44,690	7,395	09/07/79	Z
753470	233-13457		66,400	11,846	66,400	11,846	07/10/79	Z
Total EIB			305,718,317	42,327,330	305,718,317	42,327,330		
Total Participant			96,390		96,390			
Total Iran		$	305,814,707	42,327,330	305,814,707	42,327,330		
Jamaica								
734505	542-04871	$	1,544,516	502,660	1,544,516	502,660	05/10/79	Z
Korea								
703113	243-06804			144		144	04/06/81	C
713013	243-06988			4,821		4,821	06/22/81	Z
Total Korea		$		4,965		4,965		
Liberia								
703197	139-03013		1,314,072		1,314,072		12/20/78	S
753216	139-05621			567		567	05/05/80	Z
Total Liberia		$	1,314,072	567	1,314,072	567		

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			Principal	Interest	Principal	Interest		
Madagascar								
773405	143-06463-LP	$			886,835	24,307	07/31/81	Z
Mauritania								
734170	147-04710	$		465,875	351,929	615,703	02/11/80	S
Mexico								
740149	547-02174		1,082,221	648,784	1,082,221	648,784	01/31/71	Y
743278	547-05057		35,966		35,966		05/11/81	Z
783274	547-20659		8,205	1,568	8,205	1,568	05/11/81	Z
Total Mexico		$	1,126,392	650,352	1,126,392	650,352		
Morocco								
763625	151-06389	$		961,115		961,115	12/31/80	S
Nicaragua								
703174	551-02981		55,337	33,294	55,337	33,294	11/30/79	S
743757	551-05330		85,850	2,980	85,850	2,980	07/10/79	S
743716	551-05387		1,487	386,154	1,487	386,154	11/13/79	S
763097	551-06058		622,119	219,532	829,492	290,721	01/31/80	S
763016	551-06185			844,091		844,091	09/10/79	S
763590	551-06357		1,151,733	525,479	1,826,887	654,025	07/10/79	S
763252	551-14339		65,439	13,081	65,439	13,081	06/18/79	S
763238	551-14341		48,719	10,059	48,719	10,059	06/25/79	S
763270	551-14381		19,286	2,312	19,286	2,312	06/18/79	S
763275	551-14382		44,820	5,652	44,820	5,652	07/02/79	S
763271	551-14384		977	39	977	39	06/15/79	S
763350	551-14483		25,313	3,052	25,313	3,052	10/01/79	S
773018	551-20082		49,812	5,999	49,812	5,994	07/12/79	S

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773080	551-20123		30,000	7,210	37,500	9,005	07/12/79	S
773081	551-20124		35,210	9,174	41,238	10,857	07/12/79	S
773133	551-20182		63,216	7,610	63,216	7,610	07/12/79	S
773352	551-20322		6,949	270	6,949	270	10/13/79	S
773353	551-20323		7,650	596	7,650	596	07/12/79	S
773358	551-20329		85,000	26,422	85,000	26,422	10/12/78	S
783261	551-20641		16,154	1,813	16,154	1,813	07/12/79	S
Total Nicaragua		$	2,415,073	2,104,813	3,311,126	2,308,027		
Poland								
813261	473-R-00042	$	231,149	461,417	983,145	767,834	04/06/81	S
Romania								
793118	479-20931	$			40,812	260	07/31/81	Z
Senegal								
734695	166-04914	$	516,406	92,699	516,406	92,699	05/11/81	Z
Sierre Leone								
640117	169-02169		149,216		149,216		12/01/80	S
744532	169-05732		124,428	589,007	124,428	589,007	12/01/80	S
Total Sierre Leone		$	273,644	589,007	273,644	589,007		
Spain								
783084	483-06498-A				133,726		07/10/81	Z
783105	483-06498-AA				1,138,473		07/10/81	Z
783085	483-06498-B				133,726		07/10/81	Z
783194	483-06498-BB				1,138,473		07/10/81	Z
783086	483-06498-C				50,148		07/10/81	Z

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783195	483-06498-CC				426,927		07/10/81	Z
783087	483-06498-D				16,716		07/10/81	Z
783196	483-06498-DD				142,309		07/10/81	Z
Total Spain		$			3,180,498			
Sri Lanka								
683083	218-02581	$		190		190	05/15/80	C
Sudan								
733386	180-04464				1,033,125	228,927	08/10/81	S
734151	180-04780				240,250	31,811	08/05/81	S
743050	180-04827					492,154	08/10/81	S
799648	180-R-00034		98,534	170,093	98,534	170,093	07/15/80	S
799649	180-R-00034-LP		176,118	199,580	176,118	199,580	07/15/80	S
Total Sudan		$	274,652	369,673	1,548,027	1,122,565		
Togo								
744114	188-05599		267,726	21,359	367,726	21,359	06/05/81	C
793491	188-R-00031-LP		14,714		14,714		06/30/81	C
Total Togo		$	282,440	21,359	282,440	21,359		
Turkey								
723155	287-E-03808					923,836	08/17/81	S
723852	287-E-04224				2,772,000	331,647	07/06/81	S
733517	287-04514				306,517		08/05/81	S
733694	287-04575				149,143	8,819	08/10/81	S
733750	287-04587				315,284		08/05/81	
743222	287-05047				259,449	15,524	07/06/81	S
753584	287-05931				1,374,991	974,246	07/31/81	S

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754040	287-06056				91,014	203,163	07/31/81	S
763440	287-06329				466,500	118,631	07/06/81	S
Total Turkey		$			5,734,898	2,575,866		S
Uganda								
703207	190-02899	$	1,818,566	273,848	1,818,566	273,848	05/16/77	Z
Venezuela								
743075	567-05036		157,500	21,033	157,500	21,033	04/10/81	Z
754238	567-06156				2,328,099	619,292	07/06/81	Z
783023	567-06510					277,867	07/06/81	Z
Total Venezuela		$	157,500	21,033	2,485,599	918,192		
Yugoslavia								
743809	498-05101			101		101	05/11/81	C
753125	498-05733		124	2,489	124	2,489	12/10/80	C
743429	498-11954		5,156	2,928	5,150	2,928	09/13/78	T
Total Yugoslavia		$	5,280	5,518	5,280	5,518		
Zaire								
733695	117-04539			102,153		322,533	02/10/81	S
733692	117-04585		3,186,315	660,161	6,372,630	1,313,107	2/10/81	S
734642	117-04684			3,075,585		6,049,822	02/10/81	S
734150	117-04733		193,500	40,524	193,500	40,524	04/06/81	S
773090	117-R-00028		4,051,077	1,540,834	4,051,077	1,540,834	07/01/81	S
803035	117-R-00032		2,303,787	1,765,626	2,303,787	1,765,626	06/30/80	S
773404	117-R-00032-LP		5,259,496	4,136,480	5,259,496	4,136,480	06/30/80	S
Total Zaire		$	14,994,175	11,381,363	18,180,490	15,168,926		

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Total EIB			371,747,142	104,799,815	391,441,651	114,825,375		
Total Participant			96,390		96,390			
Grand Total			371,843,532	104,799,815	391,538,041	114,825,375		

Z = Staff pressing for payment

S = Rescheduling required by borrower

Y = Obligor in bankruptcy

X = Legal action initiated

C = Payment shortfall

T = Payment disputed by borrower

The following items are not included in this delinquent report as Eximbank agreed to forbear and take no action until such time as the matter may be reopened for discussion as stated in our letter of Agreement on May 11, 1961:

Country	No. of Loans	Oldest Past Due Installment	Delinquent Installments Principal	Delinquent Installments Interest	Delinquent Installments Total
China (Mainland)	4	4-1-49	$26,386,019	$25,790,299	$52,176,318

Mr. HALL. How much of this debt, this $200 billion that is owing, is secured by a mortgage or a deed of trust or some type of instrument?

Mr. WRIGHT. We do not have that information, Mr. Chairman.

Mr. HALL. Is it available?

Mr. WRIGHT. It will be available, I would imagine, in some agencies and not in others. This is one of the problems we have had and we will be obtaining this information toward the end of this year.

Mr. HALL. Well, I know a student loan would not be a secured debt. It is an open note, more or less. But I would assume that any farm loan or certain types of VA loans would be secured. Am I not correct?

Mr. WRIGHT. I would imagine that a good percentage of them would be, Mr. Chairman. I just do not know what that percentage is.

Mr. HALL. Well, did you have something to say, sir?

Mr. STEINBERG. Well, I was going to say that on student loans, while they are not secured, in some of the programs there is cosigning that is required, and on the farm loans and loans like that, while there is collateral there is a question of the value of the collateral, which is a deeper level of complexity on which the agencies have not been getting the information.

Mr. HALL. It appears to me that if you have a delinquency—and I am just looking at it now from the standpoint of a businessman or how a banker would operate—if there is a note owing and overdue that he would call in the person owing that money and say pay up or I am going to foreclose and possibly take a deficiency judgment against that person.

Does the Government ever operate like prudent business people operate?

Mr. WRIGHT. Occasionally you will find that happening, but that is not the rule, Mr. Chairman.

Mr. HALL. Well, that is a sad commentary, then, isn't it?

Mr. WRIGHT. It sure is.

Mr. HALL. Do you think that H.R. 4614 might make the Federal Government a little bit better, more prudent operator of its business?

Mr. WRIGHT. Yes, sir, absolutely. I think it is definitely a step in the right direction.

Mr. HALL. Well, I hope so.

Thank you. Thank you very much.

Mr. KINDNESS. Mr. Chairman, might I just ask one other question? In response to an earlier question it was said that if a contract debt collector were to violate a law that the United States might have liability on an agency theory.

Just to clarify the record on that point, is it your contention, Mr. Wright, that the United States would be waiving sovereign immunity by anything in this legislation?

Mr. WRIGHT. I do not believe so, no.

Mr. KINDNESS. So that if the United States were to have liability for the acts of a debt collector acting as a contractor for the Federal Government, it would be on the theory that it is outside of this legislation?

Mr. WRIGHT. Yes, sir.

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. HALL. Why could not the Government enter into a hold harmless agreement, in that contractual relationship with the collector and waive that and get out of that position?

Mr. WRIGHT. It definitely could do that, Mr. Chairman.

Mr. HALL. Thank you very much. We appreciate you gentlemen's testimony.

Mr. WRIGHT. By the way, Mr. Chairman, would you want to add to the record the listing between 1979 and 1981 of the debts and delinquencies and writeoffs by agency?

Mr. HALL. Yes, I would like to have that made a part of the record.

[The information referred to follows:]

Debts Owed the Government ($ Millions)
(As of September 30, 1981)

Agency	Total Debt 1979	Total Debt 1981	Matured Debt 1979	Matured Debt 1981	Delinquencies 1979	Delinquencies 1981	Write-offs 1979	Write-offs 1981
Agriculture	67,244	94,096	11,859	12,540	1,353	1,657	25	41
Commerce	913	1,055	273	336	178	262	10	33
Defense	8,239	11,239	2,549	896	214	167	6	16
Education	6,424	13,507	2,757	7,283	2,244	2,983	-	2
Energy	676	894	649	862	136	114	-	4
HHS	2,876	3,247	1,938	1,786	1,878	2,076	145	140
HUD	12,739	14,956	2,337	2,775	1,004	1,655	18	80
Interior	3,260	3,167	134	208	41	67	2	19
Justice	173	275	86	157	15	149	-	7
Labor	621	6,528	621	178	268	233	1	3
State	87	76	58	38	2	14	-	-
Transportation	1,219	2,183	547	183	510	153	1	10
Treasury	25,383	32,451	15,469	22,043	14,320	20,836	617	891
AID	16,463	18,057	567	651	75	84	-	106
Export-Import	12,196	16,208	1,798	16,208	202	542	-	-
GSA	515	498	114	36	5	12	-	1
ICC	99	80	99	80	99	80	-	-
NASA	640	821	173	183	5	-	20	-
OPIC	-	125	-	99	-	10	-	1
RRB	-	29	-	27	-	23	-	1
SBA	7,730	10,428	2,861	2,578	1,772	1,583	191	232
USRA	2,961	1,525	19	48	-	-	-	1
VA	3,792	4,079	1,100	772	852	777	2	38
Other	915	3,760	405	3,486	97	102	-	-
Total	175,145	239,284	46,413	73,453	25,270	33,579	1,038	1,626
Percentage Increase		37%		58%		32%		57%

Mr. HALL. Next we are honored to have with us the Honorable Jim Jeffords, Member of Congress.

Congressman Jeffords, we would be happy to hear from you at this time. I apologize for keeping you waiting, but we did not want to break into this testimony.

TESTIMONY OF HON. JAMES M. JEFFORDS, MEMBER OF CONGRESS FROM VERMONT

Mr. JEFFORDS. I think that was a wise move. I think it was very excellent testimony.

Mr. HALL. You may proceed, sir.

Mr. JEFFORDS. I think it highlighted the problems that the Government has had with respect to not running itself like a business and I would like to make some comments on that.

Some time ago I introduced H.R. 2543, and the bill which you have under discussion was pretty much included in that overall comprehensive approach. Title II of my bill relative to the Department of Education, has been enacted administratively and action has been taken by Congress to adopt other parts of my bill.

As has been pointed out, there is an astounding amount of outstanding debt for which really no collection action has been taken. The figure was already given to you that about $239 billion is owed, of which over $33 billion is delinquent or in default at agencies. About two-thirds of that is in unpaid taxes and about $9 billion is overdue loans and other debts and another $8 billion is in some form of rescheduled status because of borrowers' inability to pay.

It is important to point out as far as the collectability of these debts is concerned, that it is very difficult to look upon these debts as being about the same as those incurred by ordinary businesses because the Government makes no attempt to collect so much of it.

An indication of how much might be collected is provided by a 1979 GAO report, which indicates you could probably collect about a third of the outstanding delinquency by taking tax refunds that are owed the Federal Government, and you would get about $5.5 billion a year. Over 2 years you would collect about $11 billion of the $33 billion. An ordinary business would certainly not give money back to people that are in default on what they owe it. The Government does.

Tax refunds, of course, are not under your jurisdiction, but it is another area where I have been pushing for changes. But this bill does affect it to some extent by lifting the statute of limitations with respect to that kind of an offset. I think that is an important step, because the Government has been so slack in its collection of debts.

In 1979 we wrote off $1.5 billion as uncollectable bad debts and, as I pointed out earlier, the biggest problem here has been Government indifference. I believe the Congress is making some headway, though, on this front.

The Senate Government Affairs Committee has reported out S. 1249 and the House has passed H.R. 2811. H.R. 2811 provides one very useful tool in the battle for effective collection of Federal debts. The referral of the names of delinquent debtors to credit bu-

reaus is extremely cost effective and it will insure that those who consider reneging on their commitments to the United States know that they run the risk of being denied credit cards and loans. This has been an effective tool in New Jersey.

More recently, the House has adopted H.R. 4613, which requires the Federal departments and agencies to get the taxpayer identification numbers from applicants for credit under certain Federal loan programs. I think this is a step forward.

The bill we are discussing today has additional important pieces of sound debt collection policy. It provides incentives with respect to people in default to make sure that they are not better off by not paying what they owe the Government and repaying other debts or borrowing money, as has been pointed out. It does this by increasing the interest rates on defaulted loans.

Also, of course, there are some provisions in here with respect to permitting service of legal process for debt collection in accordance with the Federal Rules of Civil Procedure.

So, overall I think, having worked in this area for some years now, this is an important link in trying to get our outstanding debts under control and I would certainly urge the committee to pass it.

I would ask that my whole statement be made part of the record.

Mr. HALL. It will be made a part of the record.

[The prepared statement of Mr. Jeffords follows:]

TESTIMONY OF JAMES M. JEFFORDS

ON H.R. 4614

BEFORE THE JUDICIARY SUBCOMMITTEE ON ADMINISTRATIVE LAW

JUNE 10, 1982

Mr. Chairman, Members of the Subcommittee, I appreciate being given the opportunity to appear here before you today. I have come to speak on behalf of H.R. 4614, the "Debt Collection Act of 1981".

Improved federal government debt collection is an issue that I have been interested in for a long time. Consideration of this legislation before us today could not be more timely, for it is an important piece of a debt collection package which can help us bring the record projected deficits for this year and next down to acceptable levels.

The magnitude of the federal government's outstanding debt problem is astounding. Of the $218 billion owed to Uncle Sam, $33 billion is delinquent or in default at agencies and departments across the full breadth of the government. This figure comprises more than $20 billion in unpaid taxes and at least $9 billion in overdue loans and other debts. Another $8 billion is in some form of rescheduled status because of borrowers' inability to pay. Over $1 billion in bad debts are

being written off each year, and it is estimated that an additional $8 billion will be written off over the next several years.

In fiscal year 1979, the delinquency rate in five of the ten leading federal lending agencies ranged from 60 percent to an astonishing 97 percent. For example, at the end of fiscal 79, $1.4 billion in receivables was delinquent at the Department of Agriculture, $2.2 billion at the Department of Education, and $1.9 billion at the Department of Health and Human Services.

In fiscal '79, the federal government wrote off $1.5 billion as uncollectible bad debts. The cost to the American taxpayer of carrying defaulted debt is staggering -- roughly $3 billion annually. Unless Congress acts expeditiously to end this debt forgiveness spree, uncollectibles stand to grow by leaps and bounds with larger federal budgets.

Perhaps the most critical aspect of this mounting debt problem is government indifference. Loan program directors have been the last of the big-time spenders, almost solely concerned with lobbying for increased appropriations and disbursing money, and assigning a very low priority to repayment enforcement. As former Comptroller General Elmer Staats has said, agency heads have been operating on the principle that "It's more fun to give money away than to take it back."

Public awareness of waste, fraud and abuse in Washington is growing, and we will be held accountable if corrective measures are not put into place. Candidate Ronald Reagan made this issue a familiar one on the campaign trail. The General Accounting Office (GAO) has released a spate of reports over the years categorizing the vast numbers of ways the government has been squandering taxpayer money. And certainly waste and the need for improved administration of programs has been focused on as part of the revolutionary changes we have seen in the budget process recently. With worthwhile social programs cut back sharply and with more spending curtailments in the offing, Members have been asking themselves, and rightly so, if waste shouldn't be eliminated before the well-whetted budget ax cuts too deeply in programs for the needy.

I believe the Congress is making headway on this front. The Senate Governmental Affairs Committee has reported S. 1249. The House passed H.R. 2811 on May 18, 1981. This legislation provides one very useful tool in the battle for efficacious federal collection of outstanding debts. Referral of the names of delinquent debtors to credit bureaus is extremely cost effective. It will ensure that those who consider reneging on their commitments to the United States know that they run the risk of being denied credit cards and loans. In New Jersey, where the condition of all student loans is made known to credit bureaus, student defaults have been relatively low.

More recently, the House has also adopted H.R. 4613, which requires federal departments and agencies to get taxpayer identification numbers from applicants for credit under certain federal loan programs. It allows the Internal Revenue Service (IRS) to disclose to other federal agencies whether a federal loan applicant has a delinquent tax account. Finally, it would permit the IRS to disclose mailing addresses of taxpayers to agents, as well as the officers and employees, of federal agencies for use in tracking down taxpayers who owe Uncle Sam money.

The bill we are discussing today, H.R. 4614, would put in place several additional important pieces of a sound debt collection package. Some of the debts owed the government, especially those arising from overpayments of benefits or of pay and allowances, do not accrue interest. Accordingly, debtors are likely to first pay off any other financial obligations they may have. Moreover, in some federal programs, favorable interest rates are prescribed by law or established administratively. These rates are below the Treasury's cost of borrowing, and continue even after the debt becomes delinquent. There is no good reason why individuals who renege on their commitments to Uncle Sam should continue to reap the benefits of below-market rates.

We made some progress in this area in the 1981 tax cut bill. This legislation included a provision which increases the rate of interest charged on tax underpayments to 100% of the prime rate,

with annual adjustments. H.R. 4614 provides additional incentives to government debtors to keep their payments current by requiring agency heads to charge a minimum annual rate of interest on outstanding debts equal to the average investment rate for the Treasury tax and loan accounts for the twelve months ending with September each year, rounded to the nearest whole percent. Quarterly revisions of the rate are authorized under the bill when the average investment rate for the twelve months ending each calendar quarter, rounded to the nearest whole percent, is 200 basis points more or less than the existing published rate. In addition, agencies would be mandated to assess charges to cover the costs of handling delinquent claims, and would be required to levy penalty charges. The penalty charge could not exceed six percent per annum, and would apply to debts that are more than three months past due.

H.R. 4614 also includes officers or employees of federal agencies who are designated to collect or compromise federal claims in the enumeration of "protected" persons in 18 USC, Section 1114. Thus, the murder of these individuals would be a federal offense. Under the bill, the statute of limitations for actions for money damages brought by the U.S. (generally six years) would not apply to debt collection by administrative offset.

Finally, the measure would: amend the Federal Claims Collection Act of 1966 to permit service of legal process for the purposes of debt collection to be carried out in accordance with the

Federal Rules of Civil Procedure by certified or registered mail; and provide that federal agencies may contract with private collection firms for the purpose of collecting federal claims.

Several additional steps should be taken by the Congress to improve debt collection. The Post Office and Civil Service Committee will be tackling a salary offset or garnishment bill.

I would like to turn briefly to my own bill, H.R. 2543, the "Debt Collection Improvement Act of 1981". Although this legislation has much in common with the other measures I have heretofore mentioned, including H.R. 4614, it provides a collection procedure which other measures sidestep, and this procedure could prove to be the most effective of all debt collection tools. In short, the "Debt Collection Improvement Act" would permit the referral of defaulted federal loans to the IRS for offsetting against tax refunds, as a last resort collection effort.

While I realize this particular issue does not come under the jurisdiction of the Judiciary Committee, I think it is worth mentioning. It is a controversial concept. The IRS has traditionally opposed it as a distraction from its mission of sound tax administration. The Ways and Means Committee has opposed it on the grounds that it might adversely affect compliance among taxpayers, and that it would require additional IRS funding at a time when all federal agencies are being required to cut back operations as part of the overall effort to

reduce federal spending. The principal point is that the additional revenues that would accrue to the Treasury as a result of offset collection would more than pay for these new staff positions. This was the conclusion of a 1979 GAO Report.

I closing, Mr. Chairman, I want to commend the Subcommittee for taking up this important bill. I hope it will be reported out by both the Subcommittee and then the full Committee in a timely fashion.

Thank you very much, Mr. Chairman, Members of the Subcommittee.

Mr. HALL. We appreciate your very cogent and instructive testimony and the work that you have done in this field.

Mr. KINDNESS. Thank you, Mr. Chairman. Thank you, Mr. Jeffords. We indeed do appreciate your interest in this area and your work in this area.

One of the provisions of H.R. 4614 which is noted in your testimony and your statement is the provision that would include officers or employees of Federal agencies designated to collect or compromise Federal claims in the enumeration of protected persons, so that under the criminal laws the murder of such an individual would be a Federal offense.

Since it was noted in your statement, I thought it might be desirable to question whether you consider that to be an important factor in this whole process. I might state that I am a little concerned about the manner in which we sometimes include little criminal provisions here and there in various laws and approach it in a manner that causes our criminal laws to get a little bit untidy here and there.

Would it be of any particular concern to you, for example, if it were not to be included in the bill?

Mr. JEFFORDS. Well, certainly there are a number of other good provisions here which make it worthwhile to pass the bill without that particular provision. However, notwithstanding the fact that many of the debts are owed by people who are good citizens, there there are some less than desirable citizens who have a rather dangerous attitude toward these situations.

I think it would be helpful, especially in those specific areas, that these individuals ought to be covered by the Federal law. You know, when you're dealing with food stamps and other similar programs. The distinctions between money owed the Government and fraud are sometimes very narrow and hard to define. That is why I think for individuals in that particular business it would be a very good thing to have them covered so that the Federal Government could provide the protection of its laws.

Mr. KINDNESS. I know we are bound to make expressions about the lack of businesslike practices of the executive branch and independent agencies dealing with these debts, but do you care to comment for the record about the fault of the Congress in these circumstances, creating programs that involve loans and potential obligations to pay amounts of money back to the Federal Government one way or the other without making provision for the administration of these debts?

Mr. JEFFORDS. We certainly could be faulted for not passing these kinds of laws sooner, but I think the primary problem is a government attitude whereby it is entirely a distributor of funds and the obtaining of money owed is of very, very low priority.

I think that was pointed out very clearly by the previous evidence indicating that nobody even knows whether the loans are secure or how many are outstanding or how long they have been outstanding. I think it is human nature that Federal agencies which distribute funds are more likely to attract individuals who like to give the money out and see to a large extent that people benefit and who have an aversion to trying to get money back from those who are taking advantage of the Government.

There is an attitudinal change which is necessary to bring it under control.

Mr. KINDNESS. Well, in fact, if we did not have a bunch of these programs, we would not have a debt collection problem of the scope that we have.

Mr. JEFFORDS. Well, I suppose you could take that position.

Mr. KINDNESS. Thank you, Mr. Jeffords. Mr. Chairman, I yield back.

Mr. HALL. Thank you. We have a vote on so I think it would be better to recess for about 15 or 20 minutes and come back and then proceed with the testimony of the Associated Credit Bureaus.

[A brief recess was taken.]

Mr. HALL. I believe we now have the Associated Credit Bureaus, represented by Mr. Barry Connelly, accompanied by Mr. Donald Ogden. You gentlemen may proceed.

TESTIMONY OF D. BARRY CONNELLY, SENIOR VICE PRESIDENT, ASSOCIATED CREDIT BUREAUS, INC., ACCOMPANIED BY DONALD W. OGDEN, VICE PRESIDENT AND GENERAL MANAGER OF THE CREDIT BUREAU OF LA CROSSE, INC., LA CROSSE, WIS.

Mr. CONNELLY. Thank you, Mr. Chairman.

Mr. Chairman, my name is Barry Connelly. I am senior vice president of the Associated Credit Bureaus of Houston, Tex. It is a national trade association. ACB represents some 1,800 credit bureaus which produce an estimated total of more than 125 million credit reports annually. In addition, 1,300 collection services hold membership in ACB.

Accompanying me today is Donald W. Ogden, vice president and general manager of the Credit Bureau of La Crosse, Wis., and he is chairman of our association's public affairs/public relations committee. Mr. Ogden and I are presenting testimony in behalf of John

L. Spafford, the association's president, who unfortunately is hospitalized at this time.

We have been invited here today to testify on a limited aspect of H.R. 4614. Mr. Spafford and I have testified four times previously before the Congress on various debt collection measures introduced thus far. We would hope our presence here today affirms our long-standing commitment to cooperate with government at all levels when it affects our industry or when we can be of assistance.

Mr. Chairman, we congratulate you for meeting head on the challenge of collecting the $33 billion in delinquencies owed to the Federal Government by pursuing this legislation. Your initiative is a great service to the taxpayers of the country.

We believe a number of agencies are, frankly, dragging their feet concerning collection of past-due accounts, allowing a number of debtors to slip through the cracks provided by the statute of limitations. We believe the taxpayers and the Federal Government both will be best served if Congress hastens to pass legislation requiring agencies and departments to collect the money owed them.

We would like to acquaint you with two important pieces of consumer protection legislation that affect the day-to-day operations of our industry, both of which were cowritten by Associated Credit Bureaus in conjunction with Members of Congress and their staffs.

While as an industry we initially resisted Federal legislation in 1969, we soon realized that political and social sentiment virtually mandated the passage of the Fair Credit Reporting Act. From early on we worked in close cooperation with Senator William Proxmire toward the passage of a law that satisfied the legitimate concerns of Congress and consumers without, we believe, crippling the flow of credit information so vital to our economy.

Later, in 1976 and 1977, we participated actively with Congressman Frank Annunzio in the drafting, passage and implementation of the Fair Debt Collection Practices Act. Similarly, our door is and has been open to the inquiries of Government personnel charged with effectuating a Government debt collection program. Frankly, it is shocking to us as an industry and to the Nation as a whole that the Federal Government has amassed such a gargantuan amount of delinquent debt. During earlier testimony there was some shock on the faces of some of the members sitting at the table.

Only recently have the billions of dollars in delinquencies been recognized by the Government, and only then in response to pressure by two administrations. The private sector, if faced with the same problem, would have moved to correct the situation through the use of third party debt collectors and credit bureaus. The very fact that passage of a law is required for the Government to use methods long available to the private sector leaves many of our heads spinning.

However, we have eagerly supplied reams of information to the Department of Agriculture, the Veterans' Administration, the Social Security Administration, the Department of Education, the Internal Revenue Service, as well as the General Accounting Office about the methods and effectiveness of private sector debt collection and credit reporting.

Earlier this year the association was a key participant in the GAO's joint government/industry debt collection symposium, a laudable initial effort toward establishing better communication between the private sector and the bureaucracy.

Mr. Chairman, the function of the credit reporting industry is to provide the credit grantors with information sufficient to make a reasonable and fair decision on the creditworthiness of consumers. It is not designed as a punitive system to inflict suffering on consumers but rather to be objective and impartial. Simply stated, a credit bureau is a clearinghouse of consumer credit information.

Credit bureaus affiliated with our association gather, store and disseminate factual information relating to the identity and bill-paying habits of consumers. This information flows into credit bureau files from ledgers of credit grantors and from public record sources. Most users of credit reports are either retailers, banks, finance companies, mortgage lenders, oil companies, or other credit card issuers.

Nearly 4 years ago Senator Proxmire spoke of using the "discipline of the marketplace" to collect debts to the Government because it has been shown that one of the strongest persuasions for debt repayment is the possibility of having one's credit record adversely affected. As a result, passage of H.R. 4614 and companion legislation will allow Government agencies and departments to contract with credit bureaus as well as collection service offices.

Why shouldn't the doctor or the attorney or anyone who has been out of school for 5 or so years repay his Government student loan? Well, if he knew the adverse information would show up on his credit file, he most probably would be willing to pay it off and pay it off quickly. This fear of having one's credit standing adversely affected would preclude the need for collection agencies in many cases.

In previous testimony we cited examples of Government agency regulation which could defeat the purpose of enabling legislation by demanding a relationship between the credit bureau and the Government agency which is not typical of the free marketplace. H.R. 4614, which could subject—and we are not too sure of this—could subject contractor credit reporting agencies to the Privacy Act of 1974, would have the same type of debilitating effect.

At this point it is of the utmost importance that we explain the difference between Government contracting with credit bureaus and with collection agencies. In the case of credit bureaus, the Government is contracting for the opportunity to enter delinquent debt information into credit bureau records. The credit bureau wants to assist the Federal Government in that effort, if that information can be added and disseminated in the same manner as private sector information. Debt collectors, on the other hand, stand to profit substantially if awarded Government contracts allowing them to collect delinquent funds on the Government's behalf.

ACB, the Associated Credit Bureaus, supports the principles of the Privacy Act and we believe we were complying with them within the Fair Credit Reporting Act within the industry long before the Federal Government had to comply with it. We should point out that the 96th Congress agreed to exempt credit bureaus from the definition of a Government contractor on two separate oc-

casions in order to allow the Department of Education and the Veterans' Administration to report information to credit bureaus.

I might note at this point that to this day no information has been reported to credit bureaus from the VA, to my knowledge.

Certainly our credit reporting members do not seek additional civil liability under the Privacy Act on top of that imposed by the Fair Credit Reporting Act in return for doing business with the Government.

Ambivalent is the best word to describe the credit bureau industry's attitude toward the prospect of adding delinquent debtor information from the Government to its files. If we use "ambivalent" to describe the credit reporting industry, we must correspondingly use the word "frustrated" to describe the attitude of the local collector who makes up the vast majority of the collection industry in our country.

At the GAO symposium held earlier this year, a number of local collectors made their disappointment and disapproval of the Government contracting process heard loud and clear. As small businessmen, they feel, and rightly so, that they are not only being ignored by the Government but are in effect not being allowed to bid on the collection business.

Mr. Chairman, I do not know if you or any other members of the subcommittee have had an opportunity to review any recent requests for proposal for collection services, but should you have the opportunity, I direct your attention to the Department of Education [RFP]. That is it right there. This massive document, which numbers in excess of 100 pages may well be the benchmark by which the worst collection RFP's are to be judged.

ACB and two other trade groups filed protests with the Comptroller General's office citing, among other things, the RFP's virtual exclusion of local collectors. This exclusion, while not overt, was certainly present by virtue of the RFP's enormously expensive and time-consuming requirements.

Any RFP that requires additional offices to be established on or before the time of the actual award, as did the Department of Education solicitation, certainly does not avail itself to the small businessman in Hamilton, Ohio. In addition, the RFP's hardware and software requirements, as well as the short time frame provided to meet other requirements, very effectively blocked any opportunity for participation by the local collector.

This exclusion of the local collector, we believe, is shortsighted and harmful overall to the Government debt collection effort. This is not to say that the larger computerized agencies are not effective, or that the local collector is the ideal choice for every contract. Obviously, with the excessive amount of Government delinquencies, the larger agencies will sometimes be the best choice, but if a collection agency in Marshall, Tex., is best suited to collect a delinquent student loan from an alumnus of East Texas Baptist University, there should be a way to get him that business.

The average collection agency consists of eight individuals doing their most effective work within a regional or local situation. While many of them look small in comparison with the large computerized agencies, they are more often than not the largest in their area and generally the most effective.

There is no substitute for the edge afforded the local collector who enjoys the opportunity to personally counsel debtors on a one-to-one basis. The local collector also has the greater familiarity with local employers and lenders and easier access to local sources of information such as court records, city directories, credit applications, and other contacts for effective skip tracing. Readily available past-payment histories, or records of multiple accounts placed for collection result in quick decisions regarding collectability, saving time and money for all concerned.

We recognize that the size of Government-owed delinquencies and the complexity of the Government contracting process makes reconciling the needs of Government agencies to the expertise of the local collectors spread around the country a very difficult task. There is, however, no easy way to collect $33 billion. Now that the public is fully aware of the bureaucracy's lack of an operable debt collection program, the number one priority should be to collect those debts as quickly and efficiently as possible.

While H.R. 4614 endeavors to do just that, it is clear that Federal agencies need a shove to move them from the talking and studying stage to one of action. For this reason, we would suggest that the subcommittee consider adding language to this bill which would require the head of an agency or his designee to study and evaluate the full range of collection services offered by the private sector before entering into any contract.

Further, we would propose Government agencies be allowed a 6-month time period during which they must begin collecting outstanding delinquencies.

The collection industry in this country is a trained and professional group of small businessmen who are in place and ready to go to work. Just as the Federal Government hires doctors when it needs professional medical care or hires attorneys when it needs professional legal counsel, it should hire collection experts to collect delinquencies.

Mr. Chairman, thank you for your time. Mr. Ogden and I will look forward to any questions you might have.

[The prepared statement of Mr. Connelly follows:]

SUMMARY OF TESTIMONY OF ASSOCIATED CREDIT BUREAUS, INC.

Members of Associated Credit Bureaus, Inc., representing approximately 1800 credit reporting and 1300 debt collection agencies, are concerned both as taxpayers and as businessmen by the apparent inability of federal agencies to collect an estimated $33 billion in past-due accounts.

H.R. 4614, which would subject contractor credit reporting agencies to the Privacy Act of 1974, would demand a relationship between credit bureaus and the bureaucracy which is not typical of the free marketplace. The 96th Congress recognized this situation as counterproductive by passing legislation exempting credit bureaus from the Privacy Act when receiving delinquent debtor information from the Department of Education and the Veterans Administration. Credit bureaus are willing to assist the government by adding delinquent debtor information to credit bureau records, but only if the information can be added and disseminated in the same manner as private sector information.

H.R. 4614 would also allow government agencies to contract with private sector collection agencies. Because local collectors make up the majority of the collection industry in this country, and because they are the most effective in most situations, the subcommittee should consider adding language to the bill which would require the head of the agency or his designee to study the full range of collection services offered by the private sector before entering into any contract. Further, government

agencies should be allowed a six-month time period from the date of enactment during which they must begin collecting outstanding delinquencies.

TESTIMONY OF ASSOCIATED CREDIT BUREAUS, INC.

Mr. Chairman and Members of the Subcommittee on Administrative Law of the House Judiciary Committee, my name is D. Barry Connelly, and I am Senior Vice President of Associated Credit Bureaus, Inc. (ACB). A national trade association, ACB represents some 1800 credit bureaus which produce an estimated total of more than 125 million credit reports annually. In addition, 1300 collection services hold membership in ACB.

Accompanying me today is Donald W. Ogden, Vice President and General Manager of the Credit Bureau of LaCrosse, Wisconsin, and Chairman of the Association's Public Affairs/Public Relations Committee. Mr. Ogden and I are presenting testimony in behalf of John L. Spafford, ACB's President and official spokesman, who unfortunately is hospitalized and unable to be present today.

Mr. Chairman, we have been invited here today to testify on a limited aspect of H.R. 4614. Mr. Spafford and I have testified four times previously before the Congress on the various debt collection measures introduced thus far, and it is our pleasure to do so. We would hope our presence here today affirms our long-standing commitment to cooperate with government at all levels when it affects our industry or when we can be of assistance.

It has been estimated that the country is losing $14 million per day in interest on uncollected delinquencies, and that is a most substantial amount of money, particularly during the current economic period.

To add insult to injury, a number of agencies are dragging their feet concerning collection of past-due accounts allowing a number of debtors to slip through the "cracks" provided by the statute of limitations. We believe the taxpayers and the federal government both will be best served if Congress hastens to pass legislation requiring agencies and departments to collect the money owed them.

Before describing the two industry segments represented by ACB and outlining our recommendations, we would like to acquaint you with two important pieces of consumer protection legislation that affect the day-to-day operations of our industry, both of which were co-written by ACB in conjunction with members of Congress and their staffs. The association looks back with pride on the leadership role it took in 1968 to bring about implementation both by our members and credit grantors of Voluntary Policies for the Protection of Consumer Privacy. These voluntary policies formed the foundation for what later in 1971 became the Fair Credit Reporting Act (FCRA, Public Law 91-508).

While as an industry we initially resisted federal legislation in 1969, we soon realized that political and social sentiment virtually mandated the passage of a federal law. From early on we worked in close cooperation with Senator William Proxmire toward the passage of a law that satisfied the legitimate concerns of the Congress and consumers without crippling the flow of credit information so vital to our economy.

Later, in 1976 and 1977, we participated actively with Congressman Frank Annunzio in the drafting, passage and implementation of the Fair Debt Collection Practices Act (FDCPA, Public Law 95-109). Again, at that time political and social sentiment mandated the passage of such a law, and we were pleased to contribute to a piece of legislation that has proven itself as effective and workable.

Similarly, our door is and has been open to the inquiries of government personnel charged with effectuating a government debt collection program. We have eagerly supplied reams of information to the Department of Agriculture, the Veterans Administration, the Social Security Administration, the Department of Education and the Internal Revenue Service, as well as the General Accounting Office (GAO), about the methods and effectiveness of private sector debt collection and credit reporting. Earlier this year the association was a key participant in the GAO's Joint Government/Industry Debt Collection Symposium, a laudable initial effort towards establishing better communication between the private sector and the bureaucracy.

As explained in our previous testimony, Mr. Chairman, the function of the credit reporting industry is to provide the credit grantors with information sufficient to make a reasonable and fair decision on the credit worthiness of consumers. It is not designed as a punative system to inflict suffering on consumers, but rather to be objective and impartial. Simply stated, a credit bureau is a clearinghouse of consumer credit information. Credit bureaus affiliated with our association gather, store and disseminate factual information relating to the identity and bill-paying habits of consumers. This information flows into credit bureau files from ledgers of credit

grantors and from public record sources. Most users of credit reports are either retailers, banks, finance companies, mortgage lenders, oil companies or other credit card issuers.

Nearly four years ago Senator Proxmire spoke of using the "discipline of the marketplace" to collect debts due the government, because it has been shown that one of the strongest persuasions for debt repayment is the possibility of having one's credit record adversely affected. As a result, passage of H.R. 4614 and companion legislation (H.R. 4613) would allow government agencies and departments to contract with credit bureaus as well as collection service offices.

In previous testimony we cited examples of government agency regulations which could defeat the purpose of enabling legislation by demanding a relationship between the credit bureau and the government agency which is not typical of the free marketplace. H.R. 4614, which could subject contractor credit reporting agencies to the Privacy Act of 1974, would have the same type of debilitating effect. (This assumes Section 6, lines 22 and 23 apply to credit reporting agencies as well as collection service offices.)

At this point it is of the utmost importance that we explain the difference between government contracting with credit bureaus and with collection agencies. In the case of credit bureaus, the government is contracting for the opportunity to enter delinquent debtor information into credit bureau records. The credit bureau industry wants to assist the federal government in that effort, if that information can be added and disseminated in the same manner as private sector information. Debt collectors, on the other hand, stand to profit substantially if awarded government contracts allowing them to collect delinquent funds in the government's behalf.

ACB supports the principles of the Private Act and we believe we were complying with them in the FCRA within our industry long before the federal government. We should point out that the 96th Congress agreed to exempt credit bureaus from the definition of a government contractor on two separate occasions in order to allow the Department of Education and the Veterans Administration to report debtor information to credit bureaus (Public Law 96-374 and Public Law 96-466, respectively). Certainly, our credit reporting members do not seek additional civil liability under the Privacy Act on top of that imposed by the FCRA in return for doing business with the government.

Nor do they seek additional redtape. A recent survey of association leadership was overwhelming in its depiction of the credit bureau industry as unwilling to agree to any special provisions for government agencies. Well over 90 percent were adament in their opposition to any special treatment.

"Ambivalent" is the best word to describe the credit bureau industry's attitude toward the prospect of adding delinquent debtor information from the government to its files. As taxpayers and citizens, members of the industry openly applaud the intent of Congress to restore past-due dollars to government coffers. As businessmen, however, they have serious reservations about the manner in which these efforts are being pursued. If, and when, an all-encompassing piece of enabling legislation is signed into law, members of the credit bureau industry can look forward primarily to enhanced files, not enhanced bottom lines.

If we use "ambivalent" to describe the credit reporting industry we must accordingly use the word "frustrated" to describe the attitude of the local collector, who makes up the vast majority of the collection industry in our country. At the GAO symposium held earlier this year, a number of local collectors made their disappointment and disapproval of the government contracting process heard loud and clear. As small businessmen they feel, and rightly so, that they are not only being ignored by the government but are in effect not being allowed to bid on the collection business.

Mr. Chairman, I don't know if you, or any other members of the subcommittee, have had an opportunity to review any recent Requests for Proposal (RFP) for collection services, but should you have the opportunity, I direct your attention to Department of Education RFP 81-093. This massive document, which numbers in excess of 100 pages, may well be the benchmark by which the worst collection RFPs are to be judged. ACB and two other trade groups filed protests with the Comptroller General's Office citing, among other things, the RFP's virtual exclusion of local collectors. This exclusion, while not overt, was certainly present by virtue of the RFP's enormously expensive and time-consuming requirements.

Any RFP that requires additional offices to be established on or before the time of the actual award, as did the Department of Education solicitation, does not avail itself to the small businessman in Hamilton, Ohio. In addition, the RFP's hardware and software requirements, as well as the short time frame provided to meet other

requirements, very effectively blocked any opportunity for participation by the local collector. This exclusion of the local collector is short-sighted and harmful overall to the government debt collection effort. This is not to say that the larger computerized agencies are not effective, or that the local collector is the ideal choice for every contract.

The average collection agency consists of eight (8) individuals doing their most effective work within a regional or local situation. While many of them look small in comparison to the large computerized agencies, they are more often than not the largest in their area and generally the most effective.

There is no substitute for the edge afforded the local collector, who enjoys the opportunity to personally counsel debtors on a one-to-one basis. The local collector also has a greater familiarity with local employers and lenders and easier access to local sources of information such as court records, city directories, credit applications, and other contacts for effective skip tracing. Readily available past-payment histories, or records of multiple accounts placed for collection result in quick decisions regarding collectability, saving time and money for all concerned.

We recognize that the size of government-owed delinquencies and the complexity of the government contracting process makes reconciling the needs of government agencies to the expertise of local collectors spread around the country a difficult task. There is, however, no easy way to collect $33 billion. Now that the public is fully aware of the bureaucracy's lack of an operable debt collection program, the number one priority should be to collect those debts as quickly and efficiently as possible.

While H.R. 4614 endeavors to do just that, it is clear that federal agencies need a shove to move them from the talking and studying stage to one of action. For this reason, we would suggest that the subcommittee consider adding language to this bill which would require the head of an agency or his designee to study and evaluate the full range of collection services offered by the private sector before entering into any contract. Further, we would propose government agencies be allowed a six-month time period during which they must begin collecting outstanding delinquencies.

The collection industry in this country is a trained and professional group of small businessmen who are in place and ready to go to work. Just as the federal government hires doctors when it needs professional medical care or hires attorneys when it needs professional legal counsel, it should hire collection experts to collect delinquencies.

Mr. Chairman, Mr. Ogden and I will be happy to answer any questions.

[Addendum follows:]

ADDENDUM TO THE TESTIMONY OF ASSOCIATED CREDIT BUREAUS, INC.

We have already stressed that one of the strongest persuasions for debt repayment is the possibility of having one's credit record adversely affected, but we think it important to point out an additional benefit to government agencies. Once credit bureaus receive government account data, they will facilitate improved lending procedures by providing government agencies a source of information on applicants who may have incurred delinquencies with other government agencies. Since government agencies are currently prohibited from exchanging such information, access to credit bureau records under section 604 of the Fair Credit Reporting Act would provide government lending personnel with relevant information concerning applicants' payment history on previous government loans.

ACB believes the immensity of the government debt collection problem calls for an Executive Order requiring government agencies to contract with third-party debt collections. Such an order apparently is necessary to circumvent wasteful practices by agencies which intend to collect their own delinquent accounts because they are "too sensitive" and "need special handling." Those agencies' tunnel vision obviously has not allowed them to see that private sector collectors deal effectively with sensitive situations on a daily basis, since collection activity results from individuals who have used credit irresponsibly or experienced an unforseen financial setback, not from consumers who wantonly ignore their responsibilities. Thus, in every case, each consumer requires delicate treatment. The persuasive, motivational techniques of the experienced private sector collector insure not only collection of funds, but also the consumer's continued goodwill towards the credit grantor.

Nevertheless, some government agencies have taken the time-consuming and expensive step of setting up in-house collection operations. It makes no sense for a government agency to equip, staff and train a collection office at further taxpayer expense when private sector collectors are equipped, in place and ready to work. Fur-

ther, in-house collection operations are recognized by the private sector as inefficient in comparison to third-party collection agencies. Very few credit grantors maintain such operations, finding it more cost-effective to turn delinquent accounts over to professionals.

For these reasons, Associated Credit Bureaus urges the issuance of an Executive Order requiring government agencies to contract with third-party collectors, rather than wasting tax dollars to set up unnecessary, in-house collection operations.

Mr. HALL. Mr. Ogden, do you have any comments? We would be glad to hear from you, sir.

Mr. OGDEN. No formal comments. I guess I would just hitchhike a little bit on Mr. Connelly's comments relative to the virtual exclusion of the average local agency across the country with the bidding process as it presently exists. They are virtually locked out of the opportunity to participate in the placement of Government accounts.

A major part of this is, as he explained, in the complexity of the RFP. For example, we requested an RFP when the Department of Education was putting out bids and placements, and after looking at the thing, the only thing that we could see to do with it was to send it to the Commission on Paperwork for a study of that particular document. So I think that the process in some way has to be modified to enable the smaller local agencies to be involved.

I guess, as I would look at it, I would hope that the Government would approach the collection process with the attitude of obtaining maximum returns once those accounts are placed with private industry and the present process is not going to allow that.

So that would be my comment at this point. I would be glad to answer any questions that you may have.

Mr. HALL. Mr. Connelly, you mentioned on page 9 of your prepared testimony, that the Government agency should be allowed a 6-month time period during which they must begin collecting outstanding delinquencies. Why do you believe they should be allowed any additional time, because they have done such a poor job up until now in collecting delinquencies.

How do you think 6 months would improve this matter in any way?

Mr. CONNELLY. Because, Mr. Chairman, at the present time there is no time limit put on them to effectuate a program. We are suggesting that you put a time limit on them and say, "Come back to the Congress and have it going in 6 months."

Mr. HALL. They should have had the initiative prior to this time?

Mr. CONNELLY. Sure, sir, absolutely. As I said earlier, it is staggering to us that we even have to come here to have a bill passed in order to allow you to collect a delinquent account.

Mr. HALL. Is Household Finance a member of your bureau?

Mr. CONNELLY. No, sir. Well, now Household Finance uses the services of members of the Associated Credit Bureaus. They would buy credit reports. If you went in and applied for a loan with Household Finance, Household Finance may very well call the credit bureau in Marshall and ask for your credit.

Mr. HALL. Does Household Finance have collection agencies within their own organization?

Mr. CONNELLY. They certainly have a collection department or operation, I am sure. I am not personally familiar with them, but they do and anybody who extends credit does.

Mr. HALL. You mentioned the local collection agency and I certainly agree with that, but is there anything in this bill that excludes the local collection agency from being considered?

Mr. CONNELLY. No, sir, except that——

Mr. HALL. You state there should be language in the bill that would specifically set out that the local agency should be considered for these collection matters.

Mr. CONNELLY. Yes, sir, because page 5 of the bill, section 6, simply says that "the head of an agency or his designee may enter into a contract with any person or organization under such terms and conditions as the head of agency or his designee considers appropriate for collection services."

You see, that is pretty open-ended and while you are correct that it does not exclude them, by writing an RFP in this manner it could pretty well exclude the local smaller collector.

Mr. OGDEN. Mr. Chairman, could I add a comment in that respect?

Mr. HALL. Yes, sir.

Mr. OGDEN. A perfect example of the RFP. I know of an agency in Florida that started to prepare a bid for the Department of Education. They told me that they spent 3 months and the attorneys' fees of 3 months in trying to prepare the RFP and meet some of the requirements it called for. They finally round-filed it because they just simply could not do so.

It is so complex and places so many restrictions and requirements on the collection agency that the cost of preparing it virtually locks out most collectors from participating and that is part of the problem that we see.

Mr. CONNELLY. It seems to be self-defeating.

Mr. HALL. You point out the distinction between the credit bureaus and the credit agencies.

Mr. CONNELLY. And the collection agencies.

Mr. HALL. Collection agencies. In the case of credit bureaus, the Government is contracting for the opportunity to enter delinquent debtor information into credit bureau records. Now who is going to pay for that?

Mr. CONNELLY. It will be absorbed. The Government will pay for the programing or whatever it takes to get the information into a suitable form. I heard a witness saying this morning that the status of the Government records at various Government agencies is pretty poor, but they would have to pay for the programing to get those records of delinquent accounts. Let us just take student loans, for example.

Mr. HALL. How would that cost be arrived at? Now I could understand on a debt collector you might have a contingency fee in which they would work, but how would a credit bureau make any money merely having an opportunity to enter delinquent debtor information into the credit bureau records?

Mr. CONNELLY. I am not foreclosing the possibility that the credit bureau may very well find or arrive at a charge to that Government agency for computer time and the insertion of that credit history from, say, the Department of Education into the credit bureau's files. I am not saying that you could not arrive at some cost.

But let us go to the way it is today in the private sector. The major retailers of the Nation, the major credit cards and banks and so forth contribute their tape data to the credit bureau automated file. The credit bureau makes its money in the sale of the credit report that will then contain that information. So the profit, if you will, is not made on the receipt of the information from the credit grantor or from the Government but rather on the sale of the report to HFC when HFC is going to consider you for a loan.

Mr. HALL. Your interest primarily deals with the credit bureaus?

Mr. CONNELLY. Both, sir.

Mr. HALL. Both the bureaus and the debt collectors.

Mr. CONNELLY. Yes, sir. Our members do both services.

Mr. HALL. I am trying to think of an illustration that would apply to the credit bureau. Now I understand that in any area or any town, usually, of any size there is a credit bureau.

Mr. CONNELLY. Yes.

Mr. HALL. And the merchants of that town can subscribe, for a fee, to that credit bureau.

Mr. CONNELLY. That is right.

Mr. HALL. It might have a bank delinquency or a foreclosure or whatever.

Mr. CONNELLY. Or a good history.

Mr. HALL. Or a good history, yes.

But that is being done now in nearly all of the cities of any size throughout the country, I would assume.

Mr. CONNELLY. Yes.

Mr. HALL. Now where would this bill affect that relationship that now is in existence dealing solely now with credit bureaus?

Mr. CONNELLY. OK. It would simply add delinquent Government indebtedness that consumers have. It would add that information to the very reports you just discussed.

Mr. HALL. Well, isn't that being done already?

Mr. CONNELLY. No, sir. There is no reporting by the Government. For example, you take a doctor who graduated from Harvard. He is doing very well but still owes the Department of Education $7,000 on a student loan. He is getting his Mercedes-Benz and his loan at the bank and everything. The fact that he is delinquent with the Department of Education is not entered into his credit history.

Mr. HALL. But suppose that same doctor has a Farmers Home loan and he has put up a farm as collateral or that particular farm that he bought with the loan. Are you saying that that is not made a part of his credit history in a credit bureau of his hometown if he is delinquent?

Mr. OGDEN. Mr. Chairman, if I can add to that, that information of the mortgage that he has with FHA will become part of his credit file as a result of being placed in the public record in the county of wherever that property is located.

However, the payment record, how he pays that mortgage, is not being entered into the credit file. Now if the bureau receives an inquiry from a member of the bureau, it asks the bureau to specifically check with FHA as to payment habits of this particular party, and that information is available from the local FHA office.

To routinely put the information into the credit files on all of the Government loans and obligations, such as the credit grantors in the private sector do, this is not happening.

Mr. HALL. Is it possible to acquire that information from the Farmers Home Administration if an inquiry were made under the present existing setup without H.R. 4614?

Mr. OGDEN. Just on a pure inquiry basis, not on all of the existing ones. It has to be that someone calls in on Don Ogden and Don Ogden has an FHA loan. They want the bureau to check the FHA loan status. Then the bureau can call the FHA office and the FHA office is required to provide the information on Don Ogden.

Mr. HALL. Are they required to do that now?

Mr. OGDEN. Yes, sir.

Mr. HALL. So there would not be anything that they would be compelled to do under the passage of H.R. 4614 that they are not required to do at the present time.

Mr. OGDEN. The exception of what Mr. Connelly was referring to is the input of the information of all the Government obligations, not just FHA or any particular one, but from all Government departments into the bureau file.

Particularly of interest, of course, are those of a delinquent nature, but also the guy who is paying his bill, to have that information in there the same as Sears, and Penney's, and Ward's, and Master Charge, and all the rest.

Mr. HALL. Under existing law, does the credit bureau have the credit history of how a person does or does not pay his American Express card or VISA or Master Charge? Is that a part of that credit bureau record?

Mr. OGDEN. Generally so, yes, sir.

Mr. HALL. Not so much whether he or she may be delinquent but how the credit card is paid—annually, monthly or whatever the case may be?

Mr. OGDEN. They have a history. That is correct.

Mr. HALL. So this bill would not improve any on that procedure that is now in existence?

Mr. OGDEN. As far as the private sector. It would improve as far as the Government sector is concerned.

Mr. HALL. I am talking about the private sector only.

Mr. OGDEN. It would not change anything there, sir.

Mr. HALL. All right. I get back again to who is going to pay for the additional cost of the FHA, the Veterans', the loan this doctor owes that you mentioned earlier, Mr. Connelly. Who is going to pay for that insertion in the credit bureau file?

Mr. OGDEN. Maybe I can help you as a bureau operator. The Government would pay the cost of programing into the format, the standard credit reporting format, which is used by all bureaus across the country.

Mr. HALL. Break that down into the English language for me, will you?

Mr. OGDEN. OK. Standard reporting format tells who the creditor is, the date that the account was opened, the type of account, whether it is individual or joint, the high credit, the balance, payments required, anything past due and, if so, how much is past due, how many payments are past due, and then a manner of payment.

Mr. HALL. That is not being done now?

Mr. OGDEN. Not by the Government, no, sir. So the Government would pay for the cost of formatting the information and putting onto tape to provide to the bureau industry.

As a bureau operator, I would pay for the cost of the storage of that information. A credit bureau on an automated system, which the majority of the larger communities are on, is generally contracted with an automated system. Part of that cost of that service is a storage cost, so if there are files developed which we do not already have files on, there is a storage charge on those. So I would pay a storage charge.

So as I see it as a bureau operator, I am really not going to make any money as a result of the Government information being in my file, but it will be providing a service, first of all, to the Federal Government as a result of that information being in there, and leading to ultimate payoffs because of creditors being aware of the indebtedness to the Government. And it is a service to my subscribers and my members who use that information. Then they are aware of the indebtedness by individuals to the Federal Government.

Mr. HALL. Well, your subscribers would pay you for that service, would they not?

Mr. OGDEN. That is correct.

Mr. HALL. All right. Would there be any relationship between the Government and the credit bureau as to what type of a charge you would make to your customers?

Mr. OGDEN. No, sir.

Mr. HALL. That would be something between the two of you?

Mr. OGDEN. That is correct.

Mr. HALL. On the other hand, with a debt collector I assume that there would be a relationship between the Government and the collector as to how much a contingency fee may be.

Mr. OGDEN. Yes, sir.

Mr. HALL. And the manner in which a debt collector could go out into the market, so to speak, and try to collect a delinquent account.

Mr. OGDEN. Yes, sir. We have a collection division, as many of the bureaus do, and there would be that relationship. In fact, I think that this is the only way that the Federal Government should place accounts in the private sector, is on a contingency basis.

Mr. HALL. What kind of a contingency basis?

Mr. OGDEN. This would depend on the types of accounts, the sizes of accounts. There are a number of things that would have to be considered in order to arrive at that contingency. So I really cannot and do not want to give you a figure without knowing what type of accounts HUD has, what type of accounts VA has, what type of accounts Education has and so on, because it will range all over the place.

Second, you are correct that there would have to be a relationship between the Government and the agency as far as the collection of the accounts is concerned. However, I do think this, that the Government should let the private sector agencies collect the accounts as they know best how to do.

In the RFP's I think they put too many restrictions on the agency which prohibit the agency from really doing the job.

Mr. HALL. Give me an illustration of one or two of the excesses that you just mentioned in this report?

Mr. OGDEN. Well, I think for one thing timeframes. In the case of information, oftentimes it may be difficult for the agency to get information from the Department involved, and this, of course, was alluded to by Mr. Wright this morning. But all of the agencies are under the Fair Debt Collection Practices Act, so they must operate within the confines of the law.

So it seems to me that the Government should be able to place these accounts with the agencies the same as the private sector concern would and then let the agency do its job.

Mr. HALL. I recognize the gentleman from Ohio, Mr. Kindness.

Mr. KINDNESS. Thank you, Mr. Chairman, and thank you, Mr. Connelly and Mr. Ogden.

Have any of your members of the Associated Credit Bureaus been doing any collection work for the VA or for the Department of Education?

Mr. CONNELLY. Not to my knowledge.

Mr. KINDNESS. The Fair Debt Collection Practices Act provides that no regulations are to be issued to implement the act. Would you have any comment for the record as to whether this may have made administration of the act more difficult or had any particular effect on the effectiveness of the act?

Mr. CONNELLY. It has made the act more effective to not have a bureaucracy trying to interpret what you gentlemen in Congress clearly set out in the act.

Mr. KINDNESS. Does the Federal Government or its agencies, to your knowledge, ever use the credit reporting agencies to determine creditworthiness before extending credits or loans?

Mr. CONNELLY. Yes, sir. The VA and the FHA on mortgages.

Mr. KINDNESS. Is that about the only one?

Mr. CONNELLY. I think you have some with Agriculture, don't you, Don?

Mr. OGDEN. Yes, Farmers Home.

Mr. CONNELLY. Farmers Home.

Mr. OGDEN. Primarily FHA, VA.

Mr. KINDNESS. But not on crop loans for the Farmers Home Administration, that sort of thing?

Mr. OGDEN. No. As I understand, the FHA has the authority to order credit reports on farm operating loans. However, we see those types of loans go through rather consistently and in a review of the file do not see the inquiry from FHA and we often wonder why in that respect, because some of those farm operating loans are rather substantial.

Mr. KINDNESS. Now you are saying you see those go through consistently.

Mr. OGDEN. And reported as public record.

Mr. KINDNESS. You are aware of it because of the recording of the lien.

Mr. CONNELLY. The other thing, on student loans they are guaranteed by the Federal Government. The bank does not necessarily

have much incentive to pursue collection of the delinquency when they know that the Government is going to pay it off.

Mr. KINDNESS. It is called the deep pocket psychology.

Mr. CONNELLY. Yes.

Mr. OGDEN. Why bother when they have recourse.

Mr. KINDNESS. Really this is perhaps more a comment than a question, but you referred to the Department of Education's request for proposal in terms that are not entirely complimentary and I would certainly agree. It looks formidable.

But you are familiar with one type of small business or business that ranges from small to large, and that is the sort of thing that is faced by any small business that attempts to do or proposes to do or thinks of doing or dreams of doing business with the Federal Government by way of supplying goods or services. It is fantastic.

There is a lumber dealer in my district who thought this was worthy of comment to his Congressman one time, and for an order of something like twelve 10-foot 2 by 4's and four sheets of 4 by 8 plywood, rough finished plywood, he got something in the range of half of that sheaf of paper to deal with. He really did not need the business that badly.

So we lose competition for providing goods and services for the Federal Government because of complications just like that RFP you have placed on the table in front of you. As I say, that was not really a question. It was just letting off steam, I suppose, but it evidences the need for fewer people in the Department of Education sitting around writing up RFP's.

Do collection statistics show that local debt collection agencies are more successful than regional or larger debt collection agencies, or are there any such statistics available?

Mr. OGDEN. Well, I am sure that there are figures available. We know how we compare with the so-called machine operations. We know how the local agency compares with the national agency. They really operate somewhat differently from one another and obviously the local average agency is in a much better position to do the job simply because they are there on their own ground.

They know the resources of information, the resources of financing. They oftentimes know the debtor. And so they are in a better position to do a better job.

Mr. KINDNESS. Are you telling me that it is comparable to the local government as compared to the Federal Government? [Laughter.]

Mr. OGDEN. I appreciate that comment. I really do.

Again, the marketplace takes care of it. The agency that does not do the job just does not get the business. It is that simple. I think that is the way the Government should approach it.

I really question the bid process. Private sector creditors have found that the bidding process does not necessarily assure them of the best agency, and the way to measure it is to place the accounts with the agencies out there and see who does the best job.

Mr. KINDNESS. Can you envision—and I solicit comments from either of you gentlemen—could you envision the development of a situation in which some sort of syndication or joint-venture approach might be used by debt collection services in order to contract with the United States or with the various agencies of the

United States for the providing of these services on a basis that would really call for the services being provided perhaps on a subcontract basis by local collection agencies without encountering any antitrust law difficulties?

Mr. OGDEN. Yes, sir. In fact, there has been discussion of that within the industry. We were just talking about it this morning. There are several instances around the country where various agencies are trying to put together groups of agencies whereby they can participate in the placement process on a regional or a scale larger than the local basis.

I think this is going to evolve. It probably will have to in order for many of the agencies to participate, and I do not see—I guess I do not see that there is any problem as far as antitrust is concerned. Barry, you would know better.

Mr. CONNELLY. It would be helpful if in the committee language or something you could express that type of thing is not prohibited, that a Government agency would be able to accept a bid from, if you will, a consortium or a group. Because otherwise you are going to get a bureaucrat who says "No, no, nothing in the law says that I can take a bid from a conglomerate group."

So it would be helpful if the language expressed that, that that is one way of getting it to the smaller collector.

Mr. KINDNESS. To clarify the record back on the information side, the information-reporting side of this matter, there was earlier testimony relating to the cost of programing the information to be provided to the reporting bureaus, that being something that would be a cost incurred by the Federal Government. Storage cost would be incurred by those who use the information.

The question might be put is there any value to the information coming from the Federal Government and its agencies, let's say, for it to be of commercial value, that it might be saleable—the tapes might be saleable items?

Mr. CONNELLY. Let me just see if I understand you. You mean, is having the Government information added to the credit bureau file, is it worth it to those who are buying the credit reports? And the answer to that is yes, it would be very helpful to Master Card and VISA, the people who are buying the credit reports. They would like to know that you are delinquent to the Government for $7,000 on a student loan or something like that.

Mr. KINDNESS. No, I am not. [Laughter.]

However, I think it does need clarifying for the record, that there might be some commercial value there, so that perhaps a part of the cost of the preparation of the information might be recoverable through the sale of the information.

Mr. CONNELLY. Yes, sir.

Mr. OGDEN. But I think what you are saying is is there a possibility of an extra charge because of the Government information being in the file. The marketplace is going to dictate its price, the price of that file. So even though the Government information may be in that credit file, that does not necessarily mean that the credit bureau is going to be able to charge any more for that file.

There may be somewhat greater usage of the bureau file because creditors are now aware that the Government information is in the file and so they may be using the file more than they have in the

past. Under present economic conditions they are using them rather astutely right now.

Mr. KINDNESS. Well, of course, with the accounts receivable backing up as they are in the private sector, there is perhaps more occasion, actually, to be checking with credit information services in determining how to go about collecting that—whether to hurry up before some of the people disappear. Business is not all bad, I guess.

Thank you very much, gentlemen. I yield back, Mr. Chairman.

Mr. HALL. Thank you very much, Mr. Connelly and Mr. Ogden. We have a vote on. We will recess until 10:30 and then we will return for the statement of Mr. Cooper and other statements for the record.

Mr. CONNELLY. Thank you, Mr. Chairman.

Mr. OGDEN. Thank you, sir.

[A brief recess was taken.]

Mr. HALL. The subcommittee will come to order. We will now hear from Mr. Thomas Cooper, director of public affairs, American Collectors Association.

Mr. Cooper, you may proceed.

TESTIMONY OF THOMAS A. COOPER, DIRECTOR OF PUBLIC AFFAIRS, AMERICAN COLLECTORS ASSOCIATION, INC.

Mr. COOPER. Thank you, Mr. Chairman. My name is Thomas A. Cooper and I am the director of public affairs of the American Collectors Association. I appreciate the opportunity to appear before the subcommittee to present the association's thinking on H.R. 4614.

You already have my prepared statement for the record, so with your permission, Mr. Chairman, I will abbreviate my comments here.

Mr. HALL. The original statement will be made a part of the record.

Mr. COOPER. Mr. Chairman, the American Collectors Association strongly urges the passage of H.R. 4614. The association feels that passage of this legislation will greatly benefit the Federal Government and the American taxpayers.

By way of background, the American Collectors Association, or ACA, which was formed in 1939, is an international trade association with approximately 2,800 debt collection services. All but about 100 of these firms are located in the United States. Members include sole proprietorships, partnerships, and corporations, ranging from 1-person offices to firms with more than 100 employees. Member offices are located in metropolitan areas, in smaller urban areas, and in rural communities across the Nation.

ACA members handle the collection of past due retail, professional, and wholesale accounts receivable for more than 800,000 creditor grantors. Last year, approximately $6.7 billion in past due accounts were referred to ACA members and those members contacted approximately 12 million consumers who had promised to pay for goods or services by specific dates but who failed to keep those promises. These contacts resulted in the return of more than $1.5 billion to those credit grantors.

When accounts are referred by credit grantors to collection services, the overwhelming majority of these creditor grantors are highly conscious of the procedures and techniques that the collectors use, because they are deeply concerned that the good reputation that they have built up be maintained. In turn, the overwhelming majority of collection services are aware of this concern and recognize their responsibility to conduct themselves in an ethical and businesslike manner. To do otherwise would diminish their chances of retaining clients and remaining in business.

Throughout its 43-year history, ACA has guided and encouraged its members to maintain high standards of business conduct and the thrust of ACA programs has always been in this direction. A code of ethics and operations as well as a set of rules and regulations guide ACA member activities. Any members not abiding by these principles and procedures are disciplined or expelled from the association.

In addition, the American Collectors Association and its State units have been consistent advocates of debt collection regulatory legislation through the years, from promoting and lobbying for passage of the first collection agency licensing law, passed in the State of California in 1927, to the passage of the Fair Debt Collection Practices Act, which ACA supported in its final form in 1977, and on to the present.

Mr. Chairman, I do not need to review for you the magnitude of the Government's debt collection problem. You already have evidence of the staggering cost of the Government's uncollected debts to the American taxpayer through previous testimony this morning. The Government's efforts to improve the collection of its receivables are commendable and the Debt Collection Act is a very important step in the right direction. ACA fully supports the Government's debt collection efforts and the provisions of H.R. 4614.

While we believe that each of the provisions of H.R. 4614 will improve the collection of the Government's receivables, we are especially supportive of section 6, which would authorize Federal agencies to contract with the private sector for debt collection services. We believe that this legislation is needed for several reasons.

First of all, Government agencies lack the ability to collect debts effectively. In its report on strengthening Federal credit management, the OMB debt collection project stated: "Almost without exception, Government agencies are not capable of aggressive, effective debt collection. Government agencies do not have the motivation, resources, or tools to be aggressive and effective debt collectors with the result being substantial losses to the Government."

Mr. Chairman, special knowledge and skills are required to motivate people to pay past due accounts, particularly when these people cannot or do not want to pay those bills. A substantial amount of training is necessary before an individual can even begin to be a productive collector and several months of intensive collection experience, along with additional training, are necessary before that collector becomes truly effective.

For the most part, Government agencies lack the properly trained personnel and other resources necessary for effective collections. The private sector already has in place sophisticated collection programs and systems and private sector personnel involved in

collection have the necessary motivation, training, expertise, and experience.

Rather than incurring the cost of setting up collection programs and hiring and training collection personnel in an attempt to duplicate a function which is already being carried out very well by the private sector, Government agencies would be wiser to use the collection services in the private sector that are presently available to them. The passage of H.R. 4614 would make these private sector resources available to the Federal Government.

Second, confusion exists in some Federal agencies regarding the authority of those agencies to contract for collection services with private sector collectors and several other Government agencies are waiting for a debt collection act to pass before finalizing their debt collection plans. In the months since April 1981, when the General Accounting Office and the Department of Justice issued their revised standards for administrative collection of claims, staff members from the ACA have had repeated contacts with personnel from various Federal agencies with regard to their debt collection programs.

The picture emanating from those agencies was, and still is, one of a complex and sometimes contradictory maze of regulations and opinions concerning debt collection. For example, the Small Business Administration reports that it is prohibited fom using private sector collectors by Public Law 96-302, and the Justice Department is uncertain if it has the authority to contact private collectors. The Social Security Administration, on the other hand, feels that it is authorized to contract with the private sector.

Passage of H.R. 4614 would give Federal agencies the statutory authority that they need to contract with private collectors, thereby eliminating much of the confusion that some Federal agencies are now presently experiencing.

In addition, now that debt collection legislation has been proposed, other Federal agencies, such as the Department of Agriculture, are awaiting the outcome of that legislation before going forward with their debt collection plan. Passage of H.R. 4614 would assist these agencies also.

Third, collectors in the private sector have a good track record in collecting Government accounts. Collectors in the private sector have been collecting government accounts primarily at the State, county and local levels for many years. In addition, the Department of Education, as you heard this morning, has had the authority to contract for collection services from the private sector since 1978.

In the years since that time private sector collectors have established an excellent track record, collecting delinquent student loans for that Department, as evidenced by the recent signing of new contracts with two private collection contractors to collect an additional portfolio of NDSL and GSL student loan account.

Even the GAO, which several years ago opposed the use by Government agencies of private collection contractors on policy grounds, has reversed its position, citing in part the positive experience of the Department of Education in its pilot project involving the collection of delinquent student loan accounts by private contractors.

Finally, adequate safeguards exist to protect the consumer from unscrupulous collection practices. The Fair Debt Collection Practices Act, which took effect in March 1978, and numerous State statutes and regulations, prohibit abusive, deceptive and unfair practices by collection agencies. This was a second reason cited by the General Accounting Office in overturning its earlier objections to the use of private collection contractors by Government agencies.

H.R. 4614 would require compliance with the Fair Debt Collection Practices Act and to all Federal and State laws pertaining to debt collection practices. In addition, H.R. 4614 would subject collection contractors to the Privacy Act of 1974. These safeguards would adequately protect consumers owing debts to the Federal Government.

In summary, Mr. Chairman, the American Collectors Association firmly supports H.R. 4614. We believe that passage of this legislation would dramatically improve the Government's ability to collect its debts and eliminate the confusion regarding the authority of Government agencies to contract for collection services, while at the same time protecting the interests of both the Government and consumers owing debts to Federal agencies. Most important, passage of H.R. 4614 would be an important step toward returning billions of dollars to the American taxpayers.

Mr. Chairman, that concludes my prepared statement. I would be happy to answer any questions you may have.

[The prepared statement of Mr. Cooper follows:]

STATEMENT OF THOMAS A. COOPER
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Before the
Subcommittee on Administrative Law and Governmental Relations
Committee on the Judiciary
United States House of Representatives
On H.R. 4614, the Debt Collection Act of 1981
June 10, 1982

SUMMARY

1. The American Collectors Association, Inc. (ACA) is an international trade association representing more than 2,800 debt collection agencies.

2. ACA strongly urges the passage of H.R. 4614.

3. Passage of H.R. 4614 would greatly benefit the federal government and the American taxpayers.

4. H.R. 4614 will improve the government's ability to collect its debts by making private sector resources available to it for debt collection.

5. H.R. 4614 will eliminate much confusion that currently exists within government agencies regarding their authority to contract with private sector debt collectors.

6. Collectors in the private sector have a good "track record" collecting government accounts.

7. H.R. 4614 contains adequate safeguards to protect the interests of the government and consumers owing debts to federal agencies.

8. Passage of H.R. 4614 will be an important step toward returning billions of dollars to American taxpayers.

STATEMENT OF THOMAS A. COOPER
DIRECTOR OF PUBLIC AFFAIRS
AMERICAN COLLECTORS ASSOCIATION, INC.
4040 West 70th Street
Minneapolis, MN 55435

Before the
Subcommittee on Administrative Law and Governmental Relations
Committee on the Judiciary
United States House of Representatives
On H.R. 4614; the Debt Collection Act of 1981
June 10, 1982

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Mr. Chairman and Members of the Committee:

My name is Thomas A. Cooper. I am the Director of Public Affairs of the American Collectors Association, Inc. I appreciate the opportunity to appear before this subcommittee to present the Association's thinking on H.R. 4614 with respect to the collection of debts owed to or guaranteed by agencies of the federal government.

The American Collectors Association strongly urges the passage of H.R. 4614. The Association feels that passage of this legislation would greatly benefit the federal government and the American taxpayers.

Background

The American Collectors Association (ACA), which was formed in 1939, is an international organization of approximately 2,850 debt collection services. All but about 100 of these firms are located in the United States. Members include sole proprietorships, partnerships and corporations, ranging from one-person offices to firms with more than 100 employees. Member offices are located in metropolitan areas, in smaller urban areas, and in rural communities across the nation.

ACA members handle the collection of past due retail, professional and wholesale accounts receivable for more than 800,000 credit grantors.

Last year, approximately $6.7 billion in past due accounts were referred to ACA members, and those members contacted approximately 12 million consumers who had promised to pay for goods or services by specific dates but who failed to keep those promises. These contacts resulted in the return of more than $1.5 billion to credit grantors.

Consumer debtors contacted by ACA member collectors fall into several general categories. Most have fallen behind in payments due to various understandable reasons, such as unemployment, high medical bills, unexpected expenses or overbuying. The collector's job is to help them organize their budgets so that creditors can be paid. Only a small percentage are the "hard core" debt delinquents who have no intention of paying for merchandise or services they purchase. The professional collector has to know how to handle this type of debtor also.

Special knowledge and skills are required by collectors to get people to pay past due accounts, particularly when they can't or don't want to pay. To help members acquire this knowledge and skill, ACA has a progressive education program which includes putting on more than 125 seminars each year to teach collectors basic psychology and communication skills, as well as compliance with federal and state laws and local ordinances. ACA also produces various professional audiocassette training programs, as well as other materials, for members to use as training aids in their own offices.

The mobility of Americans makes ACA's annual national membership roster of major value. When people move across the country or overseas and neglect to pay their past due accounts or notify creditors of their new addresses, it's the job of collectors to "skiptrace" these people. When they are located, accounts can be forwarded through Roster listings.

Each month more than 168,000 accounts valued at over $28 million are forwarded among ACA members. Efforts by local collectors will return millions of dollars to creditors, thus helping to reduce the cost of doing business.

When accounts are referred by credit grantors to collection services, the overwhelming majority of these credit grantors are highly conscious of the procedures and techniques used because they are deeply concerned that the good reputations they have built be maintained. In turn, the overwhelming majority of collection services are aware of this concern and recognize their responsibility to conduct themselves in an ethical and businesslike manner. To do otherwise would diminish their chances of retaining clients and remaining in business. Throughout its 43-year history, ACA has guided and encouraged its members to maintain high standards of business conduct, and the thrust of ACA programs has always been in this direction. A Code of Ethics and Operations as well as a set of Rules and Regulations guide ACA members. Any members not abiding by these principles and procedures are disciplined or expelled from the Association.

In addition, the American Collectors Association and its state Units have been consistent advocates of debt collection regulatory legislation through the years, from promoting and lobbying for passage of the first collection agency licensing law, passed in the state of California in 1927, to the passage of the Fair Debt Collection Practices Act which ACA supported in its final form in 1977, and on to the present.

The Debt Collection Act

More than $239 billion in debts is presently owed to the United States

government, according to figures from the Office of Management and Budget. Among these debts are: over $13 billion in delinquent taxes; $10 billion reported improperly on the government's financial statements; more than $8 billion in rescheduled or stretched out loans; $5 billion in unpaid interest assessments; and more than $2 billion in overpayments, double payments or payments to ineligible recipients. Approximately $33 billion of these debts are delinquent or in default, and the interest on these delinquencies costs American taxpayers approximately $14 million every day.

The magnitude of the government's debt collection problem, and the cost of the government's uncollected debts to the American taxpayers, are staggering. Collection of just that portion of the $239 billion in debts owed to the government that is currently delinquent or in default would put nearly $150 into the pocket of every man, woman and child in the United States, and collection of the bad debts written off annually by federal agencies would give the average American family an addition $20 per year.

The government's efforts over the past 14 months to collect its debts are commendable, and the Debt Collection Act is a very important step in the right direction. The American Collectors Association fully supports the government's debt collection efforts and the provisions of H.R. 4614.

Nearly one year ago today this Association proposed to the Senate Governmental Affairs Committee, which was considering the Senate version of the Debt Collection Act, that language authorizing government agencies to contract out collection functions to the private sector be included in the Debt Collection Act. We were most pleased when this was added to S. 1249, and that language is an important part of H.R. 4614.

We believe that this legislation is needed, for several important reasons.

1. Government agencies lack the ability to collect debts effectively. In its Report on Strengthening Federal Credit Management, the OMB Debt Collection Project stated, "Almost without exception, [government] agencies are not capable of aggressive, effective debt collection. This is evidenced by high delinquency rates, substantial writeoff of bad debts, and the large amount of debt reschedulings . . . [Government] agencies do not have the motivation, resources, or tools to be aggressive and effective debt collectors with the result being substantial losses to the government."

Special knowledge and skills are required to motivate people to pay past due accounts, particularly when they can't or don't want to pay. A substantial amount of training is necessary before an individual can even begin to be a productive collector, and several months of intensive collection experience, along with additional training, are necessary before that collector becomes truly effective. For the most part, government agencies lack the properly trained personnel and other resources necessary for effective collections. The private sector already has in place sophisticated collection programs and systems, and private sector personnel involved in collection have the necessary motivation, training, expertise and experience. Rather than incurring the cost of setting up collection programs and hiring and training collection personnel in an attempt to duplicate a function which is already being carried out very well by the private sector, government agencies would be wiser to use the collection services in the private sector that are presently available to them. The passage of H.R. 4614 would make these private sector resources available to the Federal Government.

2. Confusion exists in some federal agencies regarding the authority of those agencies to contract for collection services with private sector collectors, and several other government agencies are waiting for a debt collection act to pass before contracting with private collectors. In the months since April 17, 1981, when the General Accounting Office and the Department of Justice issued 4CFR Part 102, their revised Standards for the Administrative Collection of Claims, staff members from the American Collectors Association have had repeated contacts with personnel in 26 federal agencies regarding their debt collection programs. The picture emanating from those agencies was, and is, one of a complex and sometimes contradictory maze of regulations and legislation governing debt collection activities. For example, the Small Business Administration reports that it is prohibited from using private sector collectors by Public Law 96-302, while on the other hand the Veterans Administration reports that it already has the authority to disclose debt information to credit bureaus pursuant to Public Law 96-466. Passage of H.R. 4614 would give federal agencies the statutory authority to contract with private collectors, thereby eliminating much of the confusion that some federal agencies are presently experiencing.

In addition, now that debt collection legislation has been proposed, some federal agencies, such as the Department of Agriculture, are awaiting to see the outcome of that legislation before contracting for collection services even though they already feel that they have the authority to contract for those services. Passage of H.R. 4614 would assist these agencies, also.

3. Collectors in the private sector have a good "track record" collecting government accounts. Collectors in the private sector have been

collecting government accounts, primarily at the state, county and local levels for many years. For example, at the state level, ACA members collect for state hospitals and institutions, taxing authorities, educational institutions, highway departments, housing authorities, and others. At the county level, ACA members collect for county hospitals and institutions, housing departments, finance departments, welfare departments, criminal divisions and others. At the city level, ACA members collect utility accounts, hospital and institutional accounts, judgments, taxes, ambulance fees, business license fees, parking fines, library fines and others. ACA members return millions of dollars annually to these government bodies.

In addition, as the committee is well aware, the Department of Education has had the authority to contract for collection services from the private sector since 1978. In the years since that time, private sector collectors have established an excellent track record collecting delinquent student loans for that department, as evidenced by the recent signing of contracts with two private collection contractors to collect an additional portfolio of NDSL and GSL accounts.

Even the GAO, which several years ago opposed the use by government agencies of private collection contractors on policy grounds, has reversed its position citing, in part, the positive experience of the Department of Education in its pilot project involving the collection of delinquent student loan accounts by private contractors.

4. Adequate safeguards exist to protect the consumer from unscrupulous collection practices. The Fair Debt Collection Practices Act [15 U.S.C. 1692], which took effect in March of 1978, and numerous state statutes and regulations, prohibit abusive, deceptive and unfair practices

by collection agencies. This was a second reason cited by the General Accounting Office in overturning its earlier objections to the use of private collection contractors by government agencies. H.R. 4614 would require compliance with the Fair Debt Collection Practices Act and to all federal and state laws pertaining to debt collection practices. In addition, H.R. 4614 would subject collection contractors to the Privacy Act of 1974. These safeguards would adequately protect consumers owing debts to the Federal Government.

Summary

In summary, the American Collectors Association firmly supports H.R. 4614. We believe that passage of this legislation would dramatically improve the government's ability to collect its debts and eliminate the confusion regarding the authority of government agencies to contract for collection services, while protecting the interests of both the government and consumers owing debts to federal agencies. Most important, passage of H.R. 4614 would be an important step toward returning billions of dollars to the American taxpayers.

Mr. HALL. Thank you, Mr. Cooper. I do have one or two questions I would like to ask you.

How would the contracting provisions of H.R. 4614 actually work? No. 1, what authority would collectors have to negotiate with debt owners regarding payment other than direct payment in full?

Mr. COOPER. Mr. Chairman, it is my understanding that certain authorities would be retained by Government agencies under 4614. For example, the Government agency would retain the authority to litigate claims and also retain the authority to compromise accounts. So what would be turned over to the private sector collector would be the authority to collect a claim in full or to work with the Federal agency to suggest other courses of action that may be open to them.

Mr. HALL. Do you believe that local small contracts with local collectors is the most effective way to handle collections?

Mr. COOPER. I believe the most effective way to handle collections would vary somewhat depending upon the types of accounts that are being referred and on the types of problems that specific Federal agencies have in their own collection areas.

For example, the Department of Education was approached with the idea of using smaller collection agencies all over the country. Their argument against doing so was that the way those accounts are maintained and the way the records are maintained, and the manner in which the information is retained by the Department of Education made it extremely restrictive in the ability of the Department of Education to refer those accounts out to many different agencies.

On the other hand, there are some Federal agencies that have widely decentralized record maintenance, the Department of Agriculture being one of those.

Mr. HALL. Well, does the Department of Education use local collectors?

Mr. COOPER. The Department of Education currently is under contract with two collection contractors, one in the city of San Francisco and one in the cities of Chicago and Atlanta, to collect student loan accounts.

Mr. HALL. What sort of a financial arrangement does the Department have with those two agencies?

Mr. COOPER. The arrangement is that certain accounts would be referred and they will be collected by those contractors on a contingent fee basis.

Mr. HALL. Do you know what the contingency fee basis is?

Mr. COOPER. The contingent fee has been reported in the San Francisco area to be 38 percent. In the Chicago-Atlanta area it is reported to be 24½ percent.

Mr. HALL. Do those two agencies for the Department have the right to compromise a claim without getting the Department approval?

Mr. COOPER. No, they do not. In those cases there is a Federal Department of Education monitor assigned to the contractor office and it is the Federal monitor who has the authority to compromise any claims that may turn up.

Mr. HALL. In those two areas that you mentioned, after the futility of an attempt to gain a compromise or a payment and is referred back to the Department, has the Department gone forward and filed any suits in the courts?

Mr. COOPER. I am not familiar with what the Department of Education has done after those accounts were returned to it. I do know that under the pilot project that the Department of Education was involved in from 1979 to 1981, some of the accounts that were not collected under that pilot project have been rereferred under the current contract.

Mr. HALL. Does the Fair Debt Collection Practices Act sufficiently assure that contractor collectors will employ proper methods of debt collection, that there would be no misrepresentation, threats or harrassment?

Mr. COOPER. We believe that it does, and I think the experience of the industry under the Fair Debt Collection Practices Act in the years since its enactment would support that.

Mr. HALL. Do you think that the contract terms that now exist in the California area and Atlanta——

Mr. COOPER. San Francisco, Chicago and Atlanta, yes.

Mr. HALL. Do you think that those terms are sufficiently attractive to make it attractive to these people to seek those contracts?

Mr. COOPER. The terms of the contracts in those three areas are attractive only to one small segment of the industry, that being the large collection companies in the country. The previous gentlemen who testified from the Associated Credit Bureaus pointed out some of the problems with those specifications.

In the case of the Department of Education, 57 pages were devoted specifically to the specifications under which a contractor would have to operate. We feel that those were unduly restrictive and would cut out some of the very qualified contractors. However, if we look at additional requests for proposal that have been issued by the Government agencies for debt collection, the Department of the Interior has issued a contract in their Office of Surface Mining that has a three-page statement as opposed to 57 pages.

I think that there are ways in which Federal agencies can make their contracts attractive to all types of collection contractors.

Mr. HALL. Why is a contract different in California than it is in Chicago for the Department of Education—the percentage?

Mr. COOPER. The contracts on each of the three areas were issued on a competitive basis and the contractors were required to bid on specific portfolios in each of the three areas. In California there were only about a half a dozen bidders, whereas in Chicago and Atlanta there were upwards of 15 to 20 bidders. I would suspect that the number of bidders and the types of bids submitted led, at least in part, to the differences in the percentage.

Mr. HALL. Do you believe that any contractors who are dealt with under this act should be bonded?

Mr. COOPER. Yes, I do, and our Association would support bonding. Bonding is a requirement of the Department of Education and I think it is a wise move.

Mr. HALL. Thank you very much, Mr. Cooper. I recognize the gentleman from Ohio, Mr. Kindness.

Mr. KINDNESS. Thank you, Mr. Chairman, and thank you, Mr. Cooper. I do not believe I have any questions at this moment.

Well, let me just check one thing. In your testimony, Mr. Cooper, you referred to the Department of Education's pilot project. Could you tell us the approximate scope of that pilot project?

Mr. COOPER. Congressman Kindness, I do not have the exact figures in front of me. The OMB testified this morning to the figure of somewhere around $1 billion. It is my recollection that may be a bit high. My recollection is that it is in the area of $700 million.

Mr. KINDNESS. You say that the private sector collectors have established an excellent track record in collecting delinquent student loans for that Department. Could you tell us about what the track record is?

Mr. COOPER. That portfolio of accounts ranged in age anywhere from about 1 year or 2 years old on back to 10 years-plus in age. The performance varied, depending on the age of the account, obviously, because the older an account is the more difficult it is to locate an individual, especially in the case of a student, who represents a very mobile population.

The figures, as far as return rate, have not been made public, but they have been the subject of a study by Booz-Allen, Hamilton and it is my understanding that the figures averaged in the area of 10-percent recovery. National figures for recovery of accounts at present range on the average from 20 to 25 percent.

However, the actual recovery experience depends a great deal on the type of information available on the debtor, the age of the account and how locatable that person might be.

Mr. KINDNESS. But your recollection is that it is about 10-percent recovery that was experienced in that pilot program?

Mr. COOPER. The information available to us was that it was around 10 percent. The expectation on the current contract is also about 10 percent.

Mr. KINDNESS. Thank you. Thank you, Mr. Chairman. I yield back.

Mr. HALL. Thank you, Mr. Cooper.

With the addition of two statements for the record, one by the General Accounting Office, submitted by Mr. Wilbur D. Campbell, Acting Director of the General Accounting Office, and a statement by Mr. John Shattuck, American Civil Liberties Union, both of the statements will be made a part of this record.

[The prepared statement of Mr. Campbell follows:]

SUMMARY OF PREPARED STATEMENT
OF
WILBUR D. CAMPBELL, ACTING DIRECTOR
ACCOUNTING AND FINANCIAL MANAGEMENT DIVISION
GENERAL ACCOUNTING OFFICE

At the start of fiscal 1982, Federal agencies reported that receivables from U.S. citizens and organizations exceeded $180 billion--a 45 percent increase in the last 2 years. Of the $180 billion about $33 billion was delinquent. Further, over $1 billion in uncollectible receivables is being written off each year and it is estimated that an additional $8 billion will be written off as uncollectible over the next several years.

We have been stressing in our reports to the Congress and in our prior testimony in support of comprehensive debt collection legislation that solving the Government's debt collection problems requires a combination of administrative and legislative actions. The President and the Office of Management and Budget are placing emphasis on resolving the debt collection problem. However, enactment of House bill 4614, along with other provisions of the comprehensive debt collection legislation now being considered by the Congress, is necessary to provide additional collection tools and remove obstacles to effective Federal collection efforts.

Our position on each section of House bill 4614 is summarized below and is discussed in more detail in the body of this statement.

Section	Subject	GAO Position
2	Protection of Federal Collectors	No objection
3	Clarification of the Statute of Limitations Relative to Offset	Support
4	Interest and Penalty on Indebtedness	Support
5	Service of Summons	Support (however, pending amendment to Federal Rules of Civil Procedure may accomplish this purpose)
6	Contracting for Collection Assistance	Support

The President and the Office of Management and Budget are placing emphasis on resolving the debt collection problem. However, enactment of House bill 4614, along with other provisions of the comprehensive debt collection legislation now being considered by the Congress, is necessary to provide additional collection tools and remove obstacles to effective Federal collection efforts.

I will comment briefly on the specific provisions of House bill 4614.

Protection of Federal Debt Collectors

Section 2 of the bill would make it a Federal criminal offense to kill a Federal officer or employee collecting debts owed the Government. We have no objection to this provision.

Clarification of the Statute of Limitations

We support Section 3 of the bill which amends the Statute of Limitations (28 U.S.C. 2415) to make clear that it does not bar administrative offset of Federal debts more than 6 years old. Although, in our opinion, the Statute of Limitations currently does not legally bar administrative offset of these debts, the Department of Justice has a contrary view. This amendment will resolve the issue.

Where practical to do so, efforts to collect debts by offset or any other means should be made while the debts are current. For many unpaid debts, however, it is not cost effective or feasible to pursue collection action through the

courts and, often, the opportunity to collect by offset does not arise or is not discovered within the 6 year period.

We are not able to estimate the amount of loss to the Government that would be experienced if this amendment is not enacted and the Justice view should prevail. The most evident impact would involve the debts of Federal employees that agencies have reported over the years to the Office of Personnel Management for eventual offset against Federal employees' retirement accounts. When offset against current pay has not been possible, this method of collecting has been regarded as a preferred alternative to burdening the U.S. Attorneys and the court system with formal legal actions to collect the debts. The Office of Personnel Management has not kept statistics on the number or amount of such debts awaiting future offset or on what portion of them is more than 6 years old, but its offset collections have averaged about $4.6 million annually over the last several years.

It should be noted that the intent of this section is consistent with a provision of Public Law 96-466 enacted on October 17, 1980, which removed any time bars which might prevent the Veterans Administration from taking administrative action to offset an indebtedness against future benefits payments made by the Veterans Administration.

Basic requirements for collection by offset are contained in the Federal Claims Collection Standards. Last July these requirements were amended to provide certain new safeguards

National Credit Union Administration, and the Department of Housing and Urban Development and are being studied by several other agencies.

The use of private sector resources, where cost effective and otherwise practical, should reduce the growing losses on uncollectible debts and reduce the volume of referrals to the Department of Justice for litigation.

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We greatly appreciate the opportunity to provide this statement.

[The prepared statement of Mr. Shattuck follows:]

STATEMENT OF

JOHN SHATTUCK

NATIONAL LEGISLATIVE DIRECTOR

AMERICAN CIVIL LIBERTIES UNION

ON

H.R. 4614

THE DEBT COLLECTION ACT OF 1981

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

June 10, 1982

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections. . . .
>
> But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected, . . . or, where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.

339 U.S. at 314-15.

Personal service is the best means of ensuring actual notice, and is the general procedure under Rule 4(d). Means of service other than personal service or its equivalent may suffice if it meets the test of "whether the method is reasonably calculated to give actual notice and, if there is some doubt on that point, is it at least the best possible procedure under the circumstances."[4] Without personal service, actual notice becomes more difficult, but certified mail with return receipt requested can meet this actual notice test.

But under the standard in H.R. 4614--"if service is otherwise unpracticable"--a grave danger exists that actual notice will never occur. This standard severely compromises a debtor's due process rights in that it diminishes the requirement of actual notice in a civil proceeding. If personal service is not to be used in debt collection cases, as is the standard under Rule 4(d), the manner of service used must at the very minimum ensure actual notice to meet

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[4] 4 C. Wright & A. Miller, Federal Practice and Procedure: Civil § 1117 (1969).

minimum due process requirements. Accordingly, the ACLU urges the Subcommittee to amend Section 5 to provide that actual notice always be given in debt-collection cases.

Regarding privacy rights, the specific provisions of H.R. 4614 do not present the grave threats to privacy rights of other parts of the proposed Debt Collection Act, which remove some current federal Privacy Act protections. Section 6 of H.R. 4614 amends the Federal Claims Collection Act, 31 U.S.C. § 952 (1966), to allow government contracts for collection services. Section 6 expressly provides that the contractor shall be subject to the Privacy Act of 1974, 5 U.S.C. § 1692 (1977). This guarantees that the privacy rights of government debtors will be safeguarded in the collection process.

Personal records maintained by government agencies are now covered by the federal Privacy Act, which protects the privacy of federal record-subjects. But unless the Privacy Act is uniformly applied to government contractors, the purpose of this important protection of individual rights will be circumvented. Fortunately, H.R. 4614 guarantees Privacy Act coverage of debt collection agencies, but other portions of the omnibus act--as well as S. 1249, the Senate companion to the omnibus House bill--do not extend Privacy Act coverage to credit reporting bureaus. This creates a substantial gap in government-collected personal information protected by the less stringent Fair Credit Reporting Act, 15 U.S.C. § 1681 (1970).

Specifically, the Fair Credit Reporting Act (FCRA) does not provide for direct access to inspect and copy records, unlike the Privacy Act. Rather, the record-subject has only a limited right to know the "nature and substance" of the information in a consumer

reporting bureau file, as described by a bureau employee. Moreover, the Privacy Act requires that record information must be accurate, relevant, timely and complete, but the FCRA only requires completeness and accuracy.

Additionally, the Privacy Act permits appeal of the denial of an amendment of a record, but the FCRA does not. Both statutes allow a record-subject to file a dispute statement with the record-keeper, but only the Privacy Act demands that the agency transmit a copy of the statement whenever the disputed information is subsequently disclosed. The FCRA also makes the investigation of a dispute over record information purely discretionary whenever the agency has "reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant."

Finally, the Privacy Act allows disclosure of information only under narrowly defined conditions, whereas the FCRA permits much wider disclosure. Credit bureaus, subject only to the FCRA, have generally been quite willing to sell reports to numerous parties having no credit relationship with the record-subject, such as inspection bureaus, insurance companies, employers, and law enforcement agencies. In most cases the individual is completely unaware of these disclosures. All these differences between the Privacy Act and the FCRA demonstrate that only the former adequately protects the privacy rights of record-subjects.

While the specific provisions of H.R. 4614 do not present serious privacy problems, the full Debt Collection Act before the Senate, S. 1249 (whose provisons parallel the House bills), endangers privacy rights in many ways. Before amendment, the Senate bill

exempted credit bureaus from Privacy Act coverage, required screening of federal credit applicants for unpaid taxes, mandated use of the social security number on federal credit applications, and permitted the IRS to disclose addresses of taxpayers to agencies, who in turn release them to credit bureaus. The ACLU asserted the following points against the Senate bill (see attached statement): (1) in addition to endangering privacy rights, the bill gave credit bureaus a "windfall profit" of federal information without limits on its use; (2) the bill allowed unlimited tax return information to be disclosed in the screening process for unpaid debts; (3) any further mandated use of the social security number would make it a universal identifier; (4) the disclosure of addresses by the IRS would threaten the original mission of the IRS as well as the privacy of taxpayers.

In response to the ACLU testimony, the Senate amended S. .249 in several ways. Now the Senate bill requires that before debtor information may be disclosed, the agency head or his designee must certify that the debt is valid and make a reasonable attempt to locate the current address of the debtor. In addition, the bill as amended limits information disclosed to the credit bureaus to the name and other identifying information on the debtor, the agency to which the debt is owed, and the amount of the debt. The amended bill also restricts the information disclosed by the IRS to agencies for delinquent tax screening. Nonetheless, the Senate bill, even as amended, seriously threatens privacy rights, most notably by failing to provide Privacy Act coverage for personal information supplied by federal agencies to credit reporting companies operating as government contractors. The ACLU remains strongly opposed to

any final package of debt collection legislation, of which H.R. 4614 is a part, which endangers the civil liberties and privacy rights of persons suspected of being federal debtors.

In sum, the ACLU recognizes the legitimate goal of H.R. 4614: more efficient management of government debts. It is very concerned, however, about the diminished due process rights enacted by Section 5 of the bill. And the ACLU urgently requests that all efforts be made in the House to guarantee federal privacy rights, as accomplished in Section 6. Without such efforts, the Debt Collection Act of 1981 will in effect subordinate individual privacy rights to government debts.

ATTACHMENT A

STATEMENT OF

JOHN SHATTUCK

LEGISLATIVE DIRECTOR

AMERICAN CIVIL LIBERTIES UNION

ON

S. 1249

THE DEBT COLLECTION ACT OF 1981

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF

THE INTERNAL REVENUE SERVICE

COMMITTEE ON FINANCE

UNITED STATES SENATE

July 20, 1981

The ACLU is a nationwide, non-partisan organization devoted to the protection of the Bill of Rights. Over recent years, the ACLU has actively promoted efforts to preserve and enhance the privacy rights of those who are the subjects of personal records maintained by private industry and government.

I appreciate this opportunity to comment again on S. 1249, which would allow federal agencies to disclose private records to consumer reporting agencies of persons alleged to be in debt to the government. I have already testified at length on all the issues with civil liberties implications before the Senate Governmental Affairs Committee. A copy of that testimony is attached. Many of the serious privacy questions I raised then have been resolved by committee amendment to the original bill. The bill now specifies and substantially narrows the information to be disclosed by the federal agencies: it requires agency heads to review and verify that a claim is owed, and make reasonable efforts to locate an individual without an address before releasing any information. The Committee also limited the information that may be disclosed by the Internal Revenue Service to loan agencies to the existence of any undisputed outstanding tax liability of a person applying for a federal loan, and established procedural safeguards for salary offsets of government employees. We commend the Governmental Affairs Committee for its effort to bring the

expedited procedures for federal debt collection into conformity with the protection of privacy interests.

Some issues remain in the bill that are troubling to the ACLU. Perhaps the most important issue is the fact that the bill circumvents the federal Privacy Act with respect to personal information disclosed by federal agencies to private credit reporting companies. This issue is discussed at length in my statement before the Governmental Affairs Committee.

A second issue is a matter on which we have repeatedly made our views heard: use of the social security number. The bill would require federal loan applicants to furnish their social security numbers, and would allow agencies to use the numbers for identity verification for debt collection. We oppose any new mandated use of the social security number, because of the inherent potential for weakening the American citizen's privacy interests. Of course, the social security number is already informally used for a variety of identification purposes. Each additional mandated use, however, is further incentive to turning the number into a "universal identifier," providing the key to access to a nationwide databank containing a wide range of personal information, with all the Big Brother connotations that accompany that notion. Because there are already so many informal uses for the social security number, and pooling of records is so common, each new mandated use should be carefully weighed. In this case, we believe the advantages for identification are minimal in comparison with the serious incremental incursion on the privacy rights of all Americans.

S. 1249 also allows the Internal Revenue Service to disclose to federal agencies mailing addresses of individuals, which may in turn be redisclosed to consumer reporting agencies in accordance with the other provisions of the bill. Such a provision puts the IRS machinery to a use for which it is not built, thereby diverting resources from its sole intended mission, the collection of taxes. In so doing, the disclosure of addresses undermine strict confidentiality in which taxpayers must have faith. Efficient tax collection depends on the public perception that all information furnished to the IRS will be kept confidential, so that voluntary provision of data will be frank and complete. Once the doors to the vast personal data within the IRS are opened, even if only a crack, taxpayers' fears for their privacy can begin to overcome their duty to reveal essential details of their lives for purposes of tax payment. Therefore, address disclosure by the IRS threatens the original mission of the IRS as well as the privacy of taxpayers.

The final issue of concern to the ACLU has been substantially resolved by Committee amendment, but we would still like to signal it for close scrutiny. Section 7 provides that in response to a request by a federal agency which is screening a loan applicant, the IRS may disclose whether such applicant has outstanding tax liabilities. We would like to see the bill specify what procedures should be followed to determine that a liability exists. These procedures should include safeguards for the taxpayers so that no disputed liability would be subject to

disclosure, no information would be released unless it had been verified and certified as accurate. The existence of safeguards will reassure the taxpayer that only limited and accurate information will be revealed, and the voluntariness of compliance on which the tax system depends will be sustained.

Conclusion

I would like to emphasize that the ACLU understands the importance of efficient federal debt collection, and we commend the efforts of the Governmental Affairs Committee in pursuing that goal in ways that attempt to minimize intrusions on individual privacy. We are nevertheless obliged to continue to offer constructive suggestions and criticisms on issues raised by the bill where we believe privacy has been unnecessarily threatened.

Thank you for the opportunity to appear before the Committee.

ATTACHMENT B

TESTIMONY OF JOHN SHATTUCK

LEGISLATIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION

on

THE "DEBT COLLECTION ACT of 1981"

before the

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

June 17, 1981

The American Civil Liberties Union is a nationwide, non-partisan organization devoted to the protection of the Bill of Rights. Over recent years, the ACLU has actively promoted efforts to preserve and enhance the privacy rights of those who are the subjects of personal records maintained by private industry and government.

I appreciate this opportunity to comment on S. 1249, which would allow federal agencies to disclose private records to consumer reporting agencies of persons alleged to be in debt to the federal government. While the objective of the proposed legislation--to facilitate collection of debts owed to the federal government--is certainly legitimate, that objective need not, and should not, be accomplished at the cost of undermining existing privacy rights protected by federal statute. Personal records maintained by government agencies are now covered by the federal Privacy Act, 5 U.S.C. Section 552a, which protects the privacy of federal record-subjects and imposes corresponding obligations on government recordkeepers.

The House of Representatives has already passed a version of this proposal, H.R. 2811, which would accomplish the debt collection objectives, but in ways that are comparatively less intrusive on the privacy rights of the subjects of the released records. I will first address the general objections of the ACLU to the approach of either version, both of which assume the necessity of diluting privacy protections to achieve their goals.

Both H.R. 2811 and S. 1249 would authorize the transfer of records to private consumer reporting agencies, the theory being that if debtors' credit ratings are affected by non-payment of federal loans, there will be incentive to meet their obligations. Since the Privacy Act applies to records maintained by government contractors, it would continue to apply to records transferred to consumer reporting agencies, were it not for a provision in the bill which repeals the Privacy Act for this category of contractors[1/].

This provision virtually amounts to a "windfall profit" for the consumer reporting industry. The industry is given free access to additional "raw material"--credit information--that it can then use to further its own business interests of rating people's credit standing. Under S. 1249, credit reporting companies are not obligated to pay anything for this information, but only to do what they are in business to do anyway. The only "cost" of this arrangement is extinguishment of the existing privacy rights of federal record subjects.

The Privacy Act and Government Contractors

Unless the Privacy Act is uniformly applied to government contractors, federal agencies will be able to avoid their responsibilities under this important law and frustrate its purpose. In its 1977 Final Report, the Privacy Protection Study Commission, established by Congress, stressed that ". . .the Federal government must assure that the basic protections of the

1/ Section 2(c)(2) of S. 1249 provides that "[a] consumer reporting agency to which a record is disclosed. . . shall not be considered a contractor for the purposes of this section."

Privacy Act apply to records generated with Federal funds for use by the Federal government." [2/] In fact, the Commission recommended that the scope of the Privacy Act be expanded so as to apply to records maintained by government grantees as well as contractors. In any event, if Congress is to allow the agencies to contract with private consumer reporting companies, both the letter and the spirit of the Privacy Act require that it continue to apply to these records.

Considerable attention over the past ten years has been focused on the impact on personal privacy of the practises of the credit reporting industry. [3/] The capacity of credit bureaus to collect, store and disseminate personal information has grown rapidly with the growth in demand for consumer credit and advances in computer technology. While these developments have made it possible for credit agencies to serve their subscribers more efficiently, they have also increased the risk of error or invasion of privacy that an individual must incur in order to enjoy the advantages of consumer credit.

The harm that may befall an individual when inaccurate, incomplete, or irrelevant information is disseminated in a credit report can be substantial. This is a result of the highly personal nature of the information incorporated into credit reports as well as the great number of important decisions which are made on the basis of this information.

2/ "Personal Privacy in an Information Society," The Report of the Privacy Protection Study Commission, p. 505, 1977 (hereafter Privacy Commission).

3/ See, e.g., Hearings before the Subcommittee on Consumer Credit of the Senate Committee on Banking, Housing and Urban Affairs on S. 2360 to Amend the Fair Credit Reporting Act (93rd Congress, 1973) and on S. 1840 to Amend the Fair Credit Reporting Act (94th Congress, 1975).

The negative impact of inaccurate or irrelevant information in a report is compounded by the practice of selling reports to just about anyone willing to pay the price. Credit bureaus possess substantial "gatekeeping" powers with the information they control affecting not only the credit relationship, but also the relationship an individual has with insurers, employers, landlords, and many others who decide whether to grant or deny a benefit on the basis of information contained in credit reports. Thus, an erroneous report can adversely affect many aspects of an individual's life.

Under S.1249, records disclosed by government agencies to credit reporting companies would no longer be protected by the Privacy Act, and would be covered only by the Fair Credit Reporting Act (FCRA). Record-subjects would thus lose a variety of important privacy rights.

a. Right of Access

In light of the dangers posed by the existence and dissemination of inaccurate personal information, basic principles of fairness require that record-subjects be granted the right to inspect and copy their records. While the Privacy Act provides for direct access, the FCRA does not. Instead, the record subject has only a limited right to know the "nature and substance" of the information in a consumer reporting agency file, as described by an agency employee.

The direct access provision of the Privacy Act is far more likely to instill confidence in the system, and provides the record subject with the information necessary to challenge the relevance or accuracy of information in the record. It also

creates an incentive for agencies to insist upon trustworthy sources, since inaccurate or misleading information will more readily be discovered and challenged. Under S. 1249 this right of access would be extinguished 60 days after a federal agency attempts to notify a record-subject of its intention to disclose the record to a consumer reporting agency.

b. Right of Correction

The Privacy Act establishes effective safeguards to insure the accuracy of record information. A record-subject may request correction or amendment of information which he or she believes is not accurate, relevant, timely or complete. Under the FCRA on the other hand, an individual may not question the relevance of information but only its completeness or accuracy.

The Privacy Act permits an individual who has been denied a correction or amendment of a record to appeal the denial, and if the appeal is unsuccessful, to seek judicial review. No such rights are provided a record-subject under the FCRA or S. 1249, once a federal record has been disclosed to a consumer reporting agency. Both statutes allow a record-subject to file a dispute statement with the recordkeeper, but only the Privacy Act places the agency under a duty to transmit a copy of the statement whenever the disputed information is subsequently disclosed. Finally, under the FCRA, an agency need not even investigate a dispute raised by a record-subject whenever "it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant." The consumer reporting

agency is free to determine which disputes are irrelevant or frivolous.

In sum, once a federal record has been disseminated to a consumer reporting agency, both S. 1249 and the FCRA deny a record-subject both the information needed to know of inaccuracies, and the procedural rights needed to assure that any inaccuracies which are discovered are expunged from the record.

c. Scope of Permissible Disclosures

The Privacy Act allows a recordkeeper to disclose information without the record-subject's authorization only under carefully defined circumstances. Both S. 1249 and the FCRA, on the other hand, dangerously expand the range of permissible disclosures. A consumer reporting agency would be permitted to furnish a credit report to any person who it "has reason to believe has a legitimate business need for the information in connection with a business transaction involving the consumer."[4/] Obviously, a consumer reporting agency will be inclined to define "legitimacy" broadly in order to sell more reports. Credit bureaus have generally been quite willing to share reports with a broad range of parties having no credit relationship with the record-subject. Generally, the record-subject is completely unaware of such disclosures, which are regularly made to collection agencies, inspection bureaus, insurance companies, employers, landlords, and law enforcement agencies.

4/ 15 U.S.C. § 1681b(3)(E).

These are only some of the important differences between the Privacy Act and the FCRA. They clearly demonstrate that a person who is the subject of records covered by the Privacy Act has far more privacy than one who is the subject of a record covered only by S. 1249 and the FCRA.

I would now like to highlight our specific comments on S. 1249, which contains some provisions that more seriously threaten the privacy rights of record-subjects than does H.R. 2811.

Limits on Information to be Disclosed

S. 1249 contains no specific restrictions on what sort of information may be released by government agencies to consumer reporting agencies. Section 3(1)(A) merely provides that any federal agency may "notify a consumer reporting agency" that a person is responsible for a claim. Government files may contain a wide variety of personal information, unrelated to a person's debt status, and release of such information to consumer reporting agencies would only invade a person's privacy. This situation is especially troublesome when such information, once released to credit reporting agencies, is subject to the weaker protection of the Fair Credit Reporting Act, as I discussed above. The House bill narrows this loophole, by explicitly limiting the information which may be disclosed to:

1. the name, address, and other information necessary to establish the identity of the debtor;
2. the amount, status, and history of the claim; and
3. the agency or program under which the claim arose.

This provision expressly preserves the privacy of most personal information in government files, to the extent that such data is not clearly necessary for the specific purpose of debt collection.

Disclosure of Tax Information

Another objectionable provision of S. 1249, not contained in H.R. 2811, amends the Internal Revenue Code to allow the Internal Revenue Service to release tax return information to federal lending agencies. This measure would seriously erode the existing statutory protection of the privacy of federal taxpayers.

IRS is given broad powers to gather a wide range of detailed, highly personal data, in order to carry out its duty of collection of taxes. In return for this freedom from constraints, Congress wisely provided in the Tax Reform Act of 1976 that the IRS conform to stringent requirements of confidentiality. Although the purpose of a tax information disclosure under S. 1249 is limited to determining the tax liability of federal loan applicants, there is no specific limit on what return information may be disclosed. Under Section 7, "return information relating to the amount, if any, of any outstanding liability of a Federal loan applicantion for any tax" could include a wide variety of information other than the amount of tax liability itself.

A person's tax returns, and the records of his or her financial transactions with a bank or another private entity, are a reflection of that person's life. Those records mirror,

often in great detail, personal habits and associations. The beginning of a tax return gives name, address, social security number, identity and dependents and the taxpayer's gross income. Various schedules may indicate political and religious affiliations and activities, medical or psychiatric treatment, union membership, creditors, investments and holdings. Additional documents compiled by the taxpayer and pertaining to statements made on a tax return, but not filed with the return contain a similar wealth of sensitive personal information. In 1975, then IRS Commissioner Donald Alexander noted that the IRS has "a gold mine of information about more people than any other agency in this country." 5/

The IRS has been given enormous, unparalleled coercive power to obtain information from individuals concerning every aspect of their private lives. Without a subpoena or a warrant or any showing of probable cause, the IRS can require an individual to divulge intimate personal information. Because of the clear threat such broad powers hold to an individual's constitutional rights to be free from government coercion, the Supreme Court has carved a narrow "required records" exception to the Fifth Amendment, principally for the benefit of IRS. See United States v. Sullivan, 274 U.S. 259 (1927). This exception and the extraordinary authority which Congress has bestowed on IRS create a powerful presumption against any proposal, such as S. 1249, to transfer that authority to other agencies of government.

5/ Committee Print, Confidentiality of Tax Returns, House Committee on Ways and Means, September 25, 1975, at 3.

The statutory authority of IRS to obtain information must not be viewed as creating some form of governmental asset which may then be transferred to other arms of the government pursuing legitimate governmental objectives. The information gained by the IRS does not in any sense "belong" to the Government. Rather, it is held in special trust by the IRS for its unique, important purpose of collecting taxes. Indeed, it is only the unique nature of the IRS function that justifies the extraordinary degree of intrusion that that agency is allowed to make into the lives of individuals. Dissemination of IRS information to other governmental agencies for non-tax purposes is a violation of the IRS' special trust.

We urge you, therefore, to adopt the approach taken by the House bill and delete the broad access provisions of Section 7 in order to avoid seriously eroding the privacy of tax information.

Social Security Numbers

S. 1249 also contains a requirement that individuals provide social security numbers on any applications for credit, financial assistance or other government payments. This provision has no counterpart in H.R. 2811. The ACLU has long taken the position that any new mandated use of the social security number threatens the privacy of all American citizens. We agree on this point with numerous government studies and commission reports, including the 1973 report of an HEW Advisory Committee on Automated Personal Data Systems and the 1977 Report of the Privacy Protection Study Commission.

Of course, the social security number is already informally used for a variety of identification purposes. Each additional mandated use, however, is further incentive to turning the number into a "universal identifier", which would provide the key to access to a nationwide databank containing a wide range of personal information, with all the Big Brother connotations that accompany that notion. Because there are already so many informal uses for the social security number, and pooling of records is so common, each new mandated use should be considered carefully, weighing its value against the dangers arising to our civil liberties. In this case, we believe the advantages for identification are minimal in comparison with the inherent threat to the privacy of all Americans.

Procedural Safeguards

The House version of S. 1249 includes several procedural safeguards which, at the very least, should be incorporated into the Senate bill.

First, H.R. 2811 requires the head of an agency to review the claims for its validity, and places responsibility on the agency head for making a specific determination that a valid claim is due. Because of the serious consequences for innocent record-subjects that would follow a miscalculation or inaccuracy, these additional procedures to guard against such errors are crucial.

For the same reasons, we support the obligation imposed by H.R. 2811 on an agency to "make reasonable efforts to locate

the individual prior to disclosing information to credit reporting agencies", when a current address is unavailable. This provision acts as insurance that individuals will be given the opportunity to respond to the possibility of dislosure, and to participate in the process by checking the accuracy of information disclosed. It also may serve to encourage otherwise unavailable individuals to meet their debt obligations. If the incentive system is to work as intended, individuals must be aware of the consequences to their credit rating if they do not meet their obligations.

We would like to commend the drafters of S. 1249 for including a requirement that the agency head "obtain satisfactory assurances from such consumer reporting agency" of compliance with the Fair Credit Reporting Act. Precisely because the restrictions on consumer reporting agencies are so relaxed, it is essential that whatever few restrictions exist be rigorously enforced. We suggest that elaboration of the specific assurances to be obtained would assist in meeting this goal.

Conclusion

While the ACLU appreciates the need to improve federal debt collection procedures, we oppose any measure which will deny record-subjects the rights currently afforded them by the Privacy Act. We do not object to the transfer of records to consumer reporting agencies so long as the Privacy Act continues to apply to these records, as it does to other records maintained by government

contractors. If the records are to be transferred, at the very least, we urge that other existing statutory protections not be abandoned. Mandated use of the social security number, reduction of IRS confidentiality and the other measures in S. 1249 criticized above, all would erode essential privacy protections. We recommend their removal from the bill. The pursuit of efficient debt collection must not trample on the privacy rights of all Americans.

Thank you for the opportunity to appear before the Subcommittee.

Mr. HALL. I would like to state that the next meeting of the subcommittee will be on Wednesday, June 16, at 9 in this room, room 2226.

Mr. KINDNESS. What hour?

Mr. HALL. Nine a.m. All the younger members have no problem with that time. At that time we will have a hearing on a bill concerning compensation for losses relating to the use of the chemical tris.

I want to thank all of you for your testimony today. It was most interesting. I have had some eye-openers from what you have said about the amount of money that is owing to the Federal Government. It is a shame and disgrace that this situation exists, and this committee is going to try to do something about it.

The subcommittee stands adjourned.

[Whereupon, at 11:46 a.m., the subcommittee adjourned.]

DEBT COLLECTION ACT OF 1981

WEDNESDAY, JULY 14, 1982

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS OF THE COMMITTEE ON THE JUDICIARY,

Washington, D.C.

The subcommittee met, pursuant to call, at 9:30 a.m. in room 2237, Rayburn House Office Building, Hon. Sam B. Hall, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Hall and Kindness.

Staff present: William P. Shattuck, counsel; Janet S. Potts, assistant counsel; James B. McMahon, associate counsel; and Florence McGrady, legal assistant.

Mr. HALL. Good morning, ladies and gentlemen. We will proceed with the meeting of the subcommittee, the continuation of the hearing on H.R. 4614.

I would like to make it a part of the record that the purpose of H.R. 4614 is to improve the debt collection procedures of the Federal Government. In recent years, increasing concern has been expressed over the growing backlog of unpaid debts owed the Federal Government. According to the Office of Management and Budget, the total receivables due to the Government as of September 30, 1979, were $175 billion. Of this amount, $49 billion, or 28 percent, represents foreign debt that is owed by foreign governments and businesses. The remaining $126 billion, or 72 percent, is domestic debt owed by individuals, businesses, educational institutions, State and local governments and other organizations.

The greatest portion of debt owed the Government is in the form of loan receivables which total about $150 billion. Most of this debt consists of long-term loans owed to 358 loan programs operated by 24 Government agencies and departments. A large portion of these loans at this time are delinquent.

At present, the administration believes that agencies face serious deficiencies in resources and tools for effective debt collection. H.R. 4614 contains provisions which are intended to provide agencies with the necessary resources and tools to collect debts owed the Government. H.R. 4614 modifies the debt collection procedures of the United States in three ways. First, the bill provides for the administrative offset of delinquent debts owed the Federal Government and by allowing these offsets beyond the existing 6-year statute of limitations on debts. Second, H.R. 4614 requires that interest be charged on all overdue debts, that carrying charges be assessed against the debtor, and that a penalty charge of no more than 6 percent be imposed for failure to pay any debt more than 90 days

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past due. Finally, the bill allows agencies to contract to private debt collectors to obtain collection services to debts owed to the agency. Such debt collectors will be bound by the Privacy Act and Federal and State laws and regulations pertaining to debt collection practices.

I, frankly, am greatly concerned about the amount of money involved in this process. I don't know that enough appropriate attention has been given to it over the years to get some of this money off the delinquent rolls, if there be any in that category, and I understand there is quite a bit.

Of course, I am also thinking about the amount of our deficit, the amount of money that this Government owes. Possibly if some of the amount due and owing could be paid, we might have a different financial picture. I know that the American people feel that this debt is too large. I feel that same way.

So we are having hearings, and we will continue having hearings tomorrow, in an attempt to find out in detail what the true picture is regarding this debt situation.

Today, we have witnesses from the Export-Import Bank, Mr. Charles Lord, vice chairman and first vice president. He will be followed by Mr. Dale Sopper, Assistant Secretary for Management and Budget, Department of Health and Human Services; and then Mr. Bill Stafford from the city of Seattle, director of intergovernmental relations for the U.S. Conference of Mayors and National League of Cities.

We will begin this morning by hearing the testimony of Mr. Lord. We are very glad all of you folks are here, and we look forward to hearing your testimony. You may proceed, sir, as you see fit. If you would, identify those people who are at the table with you.

TESTIMONY OF CHARLES E. LORD, VICE CHAIRMAN AND FIRST VICE PRESIDENT, EXPORT-IMPORT BANK OF THE UNITED STATES, ACCOMPANIED BY WARREN W. GLICK, GENERAL COUNSEL, EXPORT-IMPORT BANK, AND JAMES HESS, ACTING TREASURER-CONTROLLER, EXPORT-IMPORT BANK

Mr. LORD. Thank you, Mr. Chairman.

On my right is our General Counsel, Mr. Warren Glick; and on my left is our Acting Treasurer-Controller, Mr. James Hess.

Mr. Chairman, I thank you for giving me the opportunity to appear before you today to explain the loan and guarantee programs of the Export-Import Bank, and to clarify certain information regarding the Bank's operations.

The Export-Import Bank of the United States is a wholly owned Government corporation that was established in 1934 to provide financing support for U.S. exports through a variety of programs, including direct loans, guarantees, and insurance. Specifically, we provide financing on terms and conditions that will enable U.S. suppliers to compete with their foreign counterparts who are supported by the export credit instrumentalities of the countries in which they operate.

In carrying out its programs, Eximbank does not use appropriated funds. Rather, it borrows from the U.S. Treasury on a short-

term basis for its day-to-day needs and then rolls over these borrowings on a quarterly basis with the Federal Financing Bank. Rollovers and new borrowings from the Federal Financing Bank combined have an average life of about 6 years. Eximbank has built up reserves against possible losses totaling $2.12 billion.

Over the past half century, our financing has assisted in the export sales of more than $100 billion of U.S. goods and services. In fiscal year 1981 alone, we authorized nearly $12.9 billion in export credits, guarantees, and insurance which will be associated this year and in following years with approximately $19 billion of U.S. exports.

Under the terms of its statutory mandate, Eximbank is required to find reasonable assurance of repayment before approving any request for financing. This generally means that if a potential borrower is not considered creditworthy, a satisfactory guarantor or other forms of appropriate security will be required. In addition, the bank makes sure that each transaction it finances is technically feasible and that there are not any adverse economic impacts on the United States.

Although support for U.S. exporters is the reason for Eximbank's assistance, none of Eximbank's funds are actually loaned to them. Under our direct loan program, we extend loans directly to foreign purchasers of U.S. goods and services on repayment terms that usually run between 7 and 10 years. The foreign purchasers then use the dollars to pay for their specific U.S. purchases for which the loans were extended by Eximbank. This system has worked well and, over the past 50 years, we have made thousands of loans to foreign private and governmental entities.

In addition to the loan program, we also insure and guarantee against default for commercial or political reasons credits extended by others to finance export sales. Under our insurance programs, we extend both short-term and medium-term insurance coverage to U.S. exporters on their foreign receivables; under our guarantee programs, we provide guarantees of loans made by U.S. or foreign financial institutions for U.S. purchases. Neither of these programs involves any extension of funds by Eximbank, except to pay off claims, which we then make every attempt to recover.

Over the years, Eximbank has disbursed loans totaling $42.8 billion. As of May 31, 1982, $26.2 billion had been repaid and $16.6 billion is outstanding. Delinquent loans represent a very small part of Eximbank's $16.6 billion of loans receivable. As of that same date, $426 million of principal and $169 million of interest were delinquent for 90 days or more. Approximately 99 percent of those delinquent loans were made to governmental borrowers or have governmental guarantors, with the balance going to private borrowers.

The vast bulk of the delinquencies consists of loans to Iran, which totaled $305.4 million of principal and $55.2 million of interest. Under the terms of the hostage release agreements, an escrow account containing enough funds to repay these debts in full, as well as debts owed to all commercial banks, has been established with the Bank of England. Negotiations are continuing with Bank Markazi, the Central Bank of Iran, to arrange for repayment of all Iranian debts.

In addition, debts owed by China and Cuba account for another $62.6 million of principal and $70.6 million of interest. These loans were extended in 1946 in the case of China, and between 1951 and 1958 in the case of Cuba.

If China, Cuba, and Iran are excluded, the total principal amount of all delinquencies amounts to $58 million, and the total interest amounts to $43 million. Including China, Cuba, and Iran, principal arrears amount to less than 1 percent of total loan disbursements. Excluding those countries changes the percentage to 0.14 percent. Principal arrears as a percentage of loans currently outstanding is 2.57 percent including China, Cuba and Iran, and less than one-half of 1 percent excluding those countries.

Over the years, Eximbank has rescheduled a total of $1.55 billion of principal and $215 million of interest. Total principal rescheduled amounts to 3.61 percent of total disbursements and 9.34 percent of loans currently outstanding.

As of May 31, 1982, Eximbank had authorized $68.3 billion in guarantees and insurance since the inception of those programs. $5.6 billion of that amount is still outstanding. Claims amounting to $192 million have been paid, of which $77 million has been recovered to date.

I thank you for giving me the opportunity to appear before your subcommittee today. I will now be prepared to answer any questions you or the other members of your subcommittee may have.

Mr. HALL. Thank you, Mr. Lord.

Are all loans, guarantees, and insurance handled on a contract basis?

Mr. LORD. Yes, sir, they are.

Mr. HALL. Regarding your loans, do these contracts provide for any penalties for failure to repay the loans promptly?

Mr. LORD. Our procedures in the contracts do provide for, of course, payment of interest on delinquent principal and on delinquent interest.

I would have to check with counsel on that.

Mr. GLICK. The interest that we charge on a delinquent loan on the principal and interest is the interest on the basic loan itself, which today is 12 percent. We are currently considering and will be presenting to our Board in the near future a modification of that provision which would provide for interest after default to accrue at Eximbank's marginal cost of money. That step has not yet been taken, but it is near.

Mr. HALL. Is interest charged prior to delinquency?

Mr. GLICK. Yes, sir.

Mr. LORD. Yes.

Mr. HALL. Do these contracts provide that interest continues to accrue when any payment is late or when it is in default?

Mr. LORD. Yes, indeed.

Mr. HALL. When the loan payments are late, are the terms of repayment renegotiated and, if so, on what basis?

Mr. LORD. That is the rescheduling that I referred to in my testimony. In the case of government debt, rescheduling is usually part of a multinational/multigovernment arrangement agreed to by the Government of the United States and other governments who also have obligations due from that particular country.

Mr. HALL. What is the interest rate you now charge on loans?

Mr. LORD. Again, it is a contract.

As counsel pointed out, it is either the interest rate that is in the contract initially, or whatever is negotiated in conjunction with other governments in the rescheduling agreements.

Mr. HALL. Does the Eximbank represent some of the large corporations of the United States? I have heard the number of eight major U.S. corporations that constitute the majority of its clients; is that correct?

Mr. LORD. That is a perception that is not quite accurate. In the sense that the largest exporters in dollar volume are among the largest U.S. corporations, they tend to have the contracts, particularly on large development projects overseas, where U.S. corporations are competing against Japanese and European corporations to get the business.

Mr. HALL. Could you give me the names of those corporations? I think Boeing is one of them.

Mr. LORD. Boeing is the largest American exporter in dollar volume. General Electric Co., Westinghouse Electric Co., and the Caterpillar Tractor Co. are four that come to mind as major U.S. exporters.

In the case of the Boeing Co., for example, they sell a jet aircraft to Singapore Airlines in competition with, say, the European Airbus Consortium. We offer financing on that sale to match the financing that the Europeans offer. The loan is made to Singapore Airlines, and they take the money to pay Boeing. Boeing has no obligation to the Export-Import Bank on the debt.

Mr. HALL. You indicated on page 2 that none of Eximbank's funds are actually loaned to the U.S. exporters, that "Under our direct loan program, we extend loans directly to foreign purchasers of U.S. goods and services on repayment terms that usually run between 7 and 10 years."

When you make a loan—let us use your Boeing example for purposes of what I am going to ask you—if Boeing contracts to sell aircraft to a foreign country or to a foreign purchaser, whether it be a country or another entity, and the sale price we will say would be $2 billion—that is an exorbitant figure maybe, but let us use it for our purposes here—does the foreign purchaser make an application to the Eximbank? Would you explain to this committee exactly the procedures on a loan application from origin to fulfillment?

Mr. LORD. I will try. There are variations on the two basic themes. Essentially, we will have the application intially come to us from a U.S. exporter who is in a bidding contest for an overseas sale and will ask for a preliminary commitment from the Export-Import Bank, an indication that, under certain terms and conditions that are spelled out in the application and/or imposed by the Eximbank after review of the application, yes, we would be willing to extend a loan on the following terms and conditions: interest rate, repayment terms, et cetera.

The exporter uses that, together with the standard private sector commercial information regarding his product, price, quality, delivery, and so forth, in submitting his bid to the foreign buyer. If the exporter wins the bid, we then convert the preliminary commit-

ment to a credit authorization. It often takes a year or two before the funds are finally disbursed.

Boeing, in the example given, if they win the bid, build the aircraft with their money and finance it with their funds, and then delivers it to the foreign buyer. At the point of delivery, if we are satisfied that all terms and conditions have been met, we will disburse to the foreign buyer who, in turn, will pay Boeing. Then we collect over the life of the loan from the foreign buyer and Boeing is out of the transaction.

The other side is we will get requests from foreign buyers directly where they have not specified a U.S. exporter but there is a major project in which they expect to have some U.S. content and are inquiring as to whether or not the Export-Import Bank will finance any one of a number of successful U.S. exporters from a list should they be successful bidders. We go through the same procedure. We evaluate the credit terms and conditions and give a preliminary commitment.

Mr. HALL. Then the Eximbank borrows from the U.S. Treasury on a short-term basis for its day-to-day needs, and then rolls over this on a quarterly basis with the Federal Financing Bank.

Mr. LORD. That is correct.

Mr. HALL. Does the Eximbank go into the public sector to borrow this money?

Mr. LORD. Not directly. It is entirely through the Treasury with the Federal Financing Bank.

Mr. HALL. What interest does the Eximbank pay on that borrowed money?

Mr. LORD. It depends on the maturity, but when we borrow on, say, a 10-year basis, we will pay the Treasury's 10-year rate.

Mr. HALL. On a sale to a foreign entity, using the Boeing transaction again, it is possible then for Boeing to make a transaction or sale to a foreign purchaser and Boeing never be obligated to repay any of that money to the Eximbank.

Mr. LORD. That is correct.

Mr. HALL. Let us go to the Iranian situation. I think you said you had some delinquencies from China that are over 40 years old, and Cuba.

Mr. LORD. Yes.

Mr. HALL. Explain to me how the Iranian situation got where it is, and also Cuba and China.

Mr. LORD. I was still in school when the China one went on.

If I may defer on the Cuba and China to Mr. Glick, whose institutional memory is longer than mine, and then I will try to address the Iranian situation.

Mr. GLICK. Loans that were made to Cuba were pre-Castro loans. They were made between the period of 1951 and 1958. There is no dispute about those debts being due, but when the revolution occurred, those properties were expropriated by the Castro government and they have refused to pay that debt. We still harbor hopes of some day collecting that debt.

Mr. HALL. How much is that debt, the Cuba debt?

Mr. GLICK. Mr. Hess, do you have that?

Mr. HESS. The Cuba debt today is $36.3 million in principal, and the delinquent interest is currently $44.2 million, for a total of $80.5 million.

Mr. HALL. $80.5 million. Is that a transaction that occurred identical to the procedures as we mentioned on the Boeing transaction? Was there some local or domestic corporation that sought to do business with Cuba?

Mr. GLICK. The loans were made in the same way, directly to purchasers in Cuba. What we were financing were exports of U.S. manufacturered goods from the United States, but the loans were made to Cuban entities.

Mr. HALL. Were they made to the country or to private entities in Cuba?

Mr. GLICK. One loan was made to Compania Cubana de Electricidad, which was a government entity, an electricity operation in Cuba; one was made to the Cuban Telephone Company; and another was made to a wholly private company, Compania Cubana Premadera, S.A., which is a private paper manufacturing company. Then there were a few smaller ones.

Mr. HALL. What domestic corporation was involved in that?

Mr. GLICK. I do not have with me the names of the U.S. suppliers. We can furnish that.

In these cases, Mr. Chairman, there would not be just one U.S. supplier, there would be many ranging from 1 to 50 suppliers, or even more. But we could search our records and try to identify the suppliers for you.

Mr. HALL. Would you do that and make it a part of this record?

Mr. GLICK. Yes, sir.

[The information follows:]

EXPORT-IMPORT BANK OF THE UNITED STATES

LIST OF MAJOR U.S. SUPPLIERS UNDER DELINQUENT CREDITS TO CUBA

Credit No. 493—Cuba

Allis Chalmers Mfg. Co., American Meter Co., Anaconda Wire & Cable Co., Babcock & Wilcox, Canada Wire & Cable Co., Combustion Engineering-Superheater Co., Condensor Service & Engineering, Crescent Insulated Wire Co., Davidson Pipe Co., Ebasco International Corp., Escambia Treating Co., Hall Mark Electric Sales Co., International General Electric, International Standard Electric Co., National Valve & Manufacturing, Rockwell Manufacturing Co., United Fruit Co., U.S. Pipe & Foundry, Westinghouse Electric International Corp., and Worthington Pump & Manufacturing.

Credit No. 791—Cuba

Butler Pan-America Co., Combustion Engineering Inc., International General Electric, Jackson & Church Co., and Wallboard Dryer Co.

Credit No. 828—Cuba

Brown Trailers, Inc. and Clark Equipment Co.

Credit No. 960—Cuba

International Standard Electric Corp. and Kellogg Switchboard & Supply Co.

Credit No. 1021—Cuba

Crown Machine & Tool Co.

Mr. HALL. When the Cubans—and I am staying with Cuba for a moment—when that loan was made or approved by the Eximbank, I assume that you went through all of the various procedures that

you mentioned here, in finding reasonable assurances of repayment before you approved this request for financing.

Mr. GLICK. That is correct, sir.

Mr. HALL. I assume that you considered whether or not the potential borrower was considered creditworthy and a satisfactory guarantor, or other forms of appropriate security would be required if it were not a creditworthy loan.

Mr. GLICK. Yes, sir.

Mr. HALL. What does that usually consist of in the normal sense of doing business with these foreign people?

Mr. LORD. With the procedure on a loan, we have sort of a team. The bank in the direct loan program is organized into four geographical areas of the world: the Latin American Division, the Asian Division, the Africa-Middle East Division and a Canada-Europe-China Division.

When an application comes in, it is turned over to a loan officer. The loan officer does the credit investigation and analysis and develops the information necessary for the credit decision. We also have a staff of economists who follow the economic and political trends in each country in which we do business or might do business. The economist does an evaluation of current and expected conditions in terms of the creditworthiness of the country.

We have an engineering staff who do an evaluation of the technical feasibility of the project if it involves engineering content, which most of them do. Then we have a member of our legal division who reviews and then analyzes the transaction from the legal standpoint and the documentation required, security agreements, guarantee forms, debt instruments, and so forth.

They, as a group, develop a recommendation, which then goes to the vice president of the division for review and approval. Then it goes to the Board of Directors and the Board of Directors votes finally yes or no on each loan transaction.

Mr. HALL. Do you have any type of an escrow agreement that is drawn up whereas certain funds may be placed in escrow to guarantee the payment of these amounts?

Mr. LORD. If the credit judgment of the loan officer and supported by the board were that some such arrangement were necessary, we would make that a requirement, surely. But in most cases, that is not a requirement.

Mr. HALL. What do you have in the case of Cuba that gives you any assurance that you will ever collect any of that money?

Mr. LORD. Of course, what we had pre-1959 was a long history of doing business with a government that paid its debts. When you have revolution—I am talking now from my own personal, not Eximbank experience, but of my experience in the private sector as a banker for 25 years and getting in the international banking business—there are very few cases in history of a government actually repudiating debt, because most nations must have credit in order to survive. They have to import, they must be able to finance those imports and, therefore, the protection of their credit standing in the international community is crucial.

Cuba is a government that did not believe it needed international credit after 1959 and, therefore, refused to pay the debts contracted by the old government, and Cuba has not received credit in

the international community since 1959, except from one government.

Mr. HALL. Did the government guarantee that loan?

Mr. LORD. The Cuban Government?

Mr. HALL. Yes.

Mr. LORD. Two of the entities were government entities, government-owned corporations, so it was the credit of the government.

Mr. HALL. Let me yield to Mr. Kindness, the gentleman from Ohio, for any questions he may have. Then we will come back. I don't want to monopolize this.

Mr. KINDNESS. Thank you, Mr. Chairman. Thank you, Mr. Lord.

I would like to pursue somewhat similar lines for just a moment with regard to transactions about which I will theorize.

Is it possible that there might be a transaction in which a U.S.-based corporation owning a substantial interest in another corporation in, let us say, Argentina, Nicaragua, wherever, might be involved in the financing of a transaction in which the—let us say it is a subsidiary with domestic ownership in the foreign country sharing the ownership of the corporation that is a subsidiary of the U.S. corporation—suppose we have a transaction in which the parent corporation were to sell goods to the subsidiary corporation, and an application is made for Eximbank financing for this transaction. Is there anything automatic in your procedures that would cause that case to be treated differently from the transactions you have been describing in response to the chairman's questions?

Mr. LORD. I am going to have to ask counsel again. I have not seen that kind of application yet, so I will have to ask Mr. Glick.

Mr. GLICK. Usually we will limit our financing to the subsidiary to purchases from third companies, not sales from the parent to the subsidiary, but there are cases, I think, in the history of the Bank where we have financed the sale from parent to sub. We do look particularly closely at any such transaction to satisfy ourselves that it is an arm's length one and that the goods and the prices being sold are proper and appropriate. But that is the unusual case.

Mr. KINDNESS. If there were to be such a situation currently, would it be within the policies of the Eximbank to look to the parent corporation for any form of guarantee with respect to repayment of the loan?

Mr. GLICK. Normally, I would say the answer is no, because if private capital is available to finance a transaction, then we do not want to do it. Normally, if you have the U.S. parent willing to guarantee the transaction, private banks can do it without the Eximbank.

There are, however, instances where private banks will not finance a transaction even with the guarantee of the U.S. parent, and we would in such case, on occasion, seek that guarantee ourselves.

Mr. KINDNESS. So that would be about the only case in which there would be a U.S.-based seller-guarantor to whom you might be looking for payment at some point in the event of default; is that correct?

Mr. GLICK. That is correct, sir.

Mr. KINDNESS. Going back to H.R. 4614, if we were to consider in the markup of this legislation any amendment to the bill that might have some impact on Eximbank's operations, it would be apparently only in that area that it would be appropriate, in my thinking, for us to consider it. Otherwise this legislation doesn't really affect the operations of Eximbank. Is that correct?

Mr. LORD. That is essentially correct. There is one area where it might be a matter of interpretation. That is that for a very small amount of our insurance transactions for short-term exports, there is no interest charged on the sale by the exporter. In other words, in an open account sale, it is a 30-day term, 60-day term, we cover the sale under our blanket insurance policy, and there is a provision in the proposed legislation that in the event of a delinquency, interest should be charged.

Here it is a matter of interpretation. We would say that where the contract of sale does not carry interest, then it is exempt. But this is a very small percentage of our business. If our understanding of that is incorrect, then we would want to consult with the committee counsel on that particular small part of it as to how it would affect us.

Mr. KINDNESS. It would appear that it might be desirable for that point to be clarified in the process of markup of this legislation, I take it.

Mr. LORD. I would assume so, yes.

Mr. GLICK. Yes, we would like that clarified with your committee.

Mr. KINDNESS. What is the extent of the authority of the Eximbank to forgive debt or to write off debt?

Mr. LORD. That, as I understand it, is entirely up to the Board of Directors of the bank on, of course, appropriate review and recommendation.

Mr. KINDNESS. The consequences of writing off or forgiving debt are not known to me. Could you describe what occurs in the event that a debt is eventually written off?

Mr. LORD. Basically, there is not much difference, as I see it, between what the Eximbank does in this area and what a private bank does. You never give up your claim. You may, for accounting purposes and balance sheet purposes, write it off against your reserves in order to present a fair picture of the condition of the bank.

But you retain any rights you may have, as far as the debtor goes, to collect at some future date. If you believe that there are some opportunities for collection, no matter how far in the future—and this is the situation with Cuba, for example—you keep it alive on the books as a valid claim so that in the event the conditions change in that country and there is some recovery available, you are there with your claim.

Mr. KINDNESS. In the case of Cuba, specifically, there was legislation passed, as I recall, which established the authority for the Foreign Claims Settlement Commission to accept claims against Cuba along about 1959 or 1960, somewhere along in there. Are the claims of Eximbank processed through that mechanism as well as keeping it on the books? Or is Eximbank not a participant in those Foreign Claims Settlement Commission proceedings?

Mr. LORD. I would have to ask Mr. Glick.

Mr. GLICK. We submitted our claims to every agency that would accept them, including that one and the State Department. But we continue to press for payment ourselves and consider ourselves primarily responsible for that collection.

Mr. KINDNESS. I remember putting a great deal of time into the preparation of a claim like that for a Cuban subsidiary of the company I worked for and thinking how much of a waste of time it probably was eventually. So far, it was a waste of time.

Thank you very much for your answers.

Mr. Chairman, I yield back.

Mr. HALL. If the parent corporation, as I understand it, guarantees the payment, then the Eximbank does not become involved?

Mr. LORD. Essentially, that is correct. As Mr. Glick said, we feel that is a private sector transaction.

Mr. HALL. Why would not that in itself—if the American exporter guarantees the payment, it looks like that would be something that you would want to be able to fall back on in the event you had a default.

Mr. LORD. As I understand it, the question had to do with an export from an American company to its overseas subsidiary, either wholly or partially owned.

In the rare case where we would get and take a U.S. corporate guarantee would be for intercompany transaction, although basically we don't do them. An exporter selling to a third party overseas, after the date of the sale, has no further interest. Either his bank or the Export-Import Bank takes over once the sale is made. I would doubt very much that an exporter would want to guarantee the next 10 or 15 years of the credit of that foreign buyer. That is the responsibility of the bank or the Export-Import Bank.

Mr. HALL. In your prepared testimony, you state that as of May 31, 1982, there is $16 billion outstanding, and I presume delinquent.

Mr. LORD. No. Of that $16.6 billion, only $400 million is past due or delinquent; $16.2 billion is current, being paid according to the terms.

Mr. HALL. I am sorry. I didn't read far enough. "As of that same date, $426 million of principal and $169 million of interest were delinquent for 90 days or more."

Mr. LORD. Correct.

Mr. HALL. That totals close to $600 million. What efforts are being made to collect that money?

Mr. LORD. There is a continuing collection effort on an ongoing basis, depending on the case, of that $426 million. As we pointed out $305 million is in Iran. The funds have been set aside by the Government of Iran in an account with the Bank of England. We are pursuing our claim to the Bank of England, and we expect to be paid in full.

Mr. HALL. Do you have any reasonable assurance that that Iranian indebtedness will be paid?

Mr. LORD. Yes, we are very confident that it will. The negotiations have to do with establishing the validity of your claim and the amounts and all of that. But the agreement is there and the

money has been deposited. The money is out of the control of the Iranians.

Mr. HALL. All right.

We haven't mentioned China. You say that China and Cuba accounted for another $62 million of principal and $70 million of interest.

Mr. LORD. Right.

Mr. HALL. How much is owing by China?

Mr. LORD. The principal of the China debt is $26.4 million, and accumulated interest since 1946 is another $26.3 million.

Mr. HALL. Since 1946?

Mr. LORD. Yes.

Mr. HALL. What is the cause for that not having been repaid?

Mr. LORD. Again, I have to ask counsel on that.

Mr. GLICK. Again, Mr. Chairman, these loans were made to the Chiang Kai Shek government during the period 1946 to 1951. After the civil war and revolution in China, as you know, we did not have relations with mainland China until very recently and there was no means for us to seek payment for these debts.

Upon the normalization of relations with China, we did again present our claim to the Chinese Government. There is a difference of view between them and us on their obligation to pay this debt. They assert they did not get the benefit of the products which were exported because that was incurred by the Chiang Kai Shek government, and they have as a matter of policy renounced all debt that was incurred by the Chiang Kai Shek government.

Mr. HALL. Do you have any recourse after you reach that impasse between this country and that country?

Mr. GLICK. I think the only recourse that is left to us is diplomatic. We have not yet been successful, and I do not know whether we will be.

Mr. KINDNESS. Would the gentleman yield on that?

Mr. HALL. Yes.

Mr. KINDNESS. Are any transactions currently being considered involving sales to mainland China?

Mr. LORD. Yes. We already committed and made loans to mainland China. Actually the loans were to the Bank of China to finance two projects. There are three China loans, actually. I think they total about $70 million.

Mr. KINDNESS. Was consideration of those loans affected in any way by this past history? I realize you might have to segregate those two things because of policy considerations at this point, but did that provide any leverage position at all?

Mr. LORD. Again, I doubt it. As Mr. Glick has said, the relations between the U.S. Government and the Government of China today are—I guess the word is "normal." We have representation. The way the world goes in history, it is encouraging American business to do business in China, and vice versa. Coming into this bank from the outside, I wish the bank that I ran had as good a loss experience as the Eximbank over the years, as far as delinquencies and collections go, as a practical matter.

Mr. KINDNESS. I think these things could get perhaps a little extra attention and focus because of the international governmental aspect of it.

Mr. LORD. Sure.

Mr. KINDNESS. I don't mean to unduly pursue that point. The traditional means for collecting past debts like that is the leverage with respect to extension of further credit. I was just wondering whether we were pursuing anything in that area.

Mr. LORD. I wouldn't be surprised if there have been some private conversations, but there has been nothing official.

Mr. KINDNESS. Thank you for yielding, Mr. Chairman.

Mr. HALL. From just a practical standpoint of the way you have done business in banking before you got into this thing, you don't have any reason to believe we are going to collect a dime from Cuba or China, do you?

Mr. LORD. No, I wouldn't go that far.

Mr. HALL. It has taken 46 years for China, and we haven't done too well.

Mr. LORD. Correct.

Mr. HALL. I don't think Fidel Castro is going to meet us in Miami with a check; you don't either.

Mr. LORD. No. On the other hand, I know that there are people on Wall Street who are making money selling Soviet bonds at a deep discount. There are people who still think they will get something back.

Mr. HALL. It appears to me that the Eximbank has no recourse to collect this money.

Mr. LORD. That is correct.

Mr. HALL. Has anything ever been considered by the board as to any further ways to try to go into that sector and try to collect this money other than just thinking about it and discussing it among themselves?

Mr. LORD. I don't know of any avenue left for the bank. It is really more now, as Mr. Glick has said, a diplomatic problem between essentially the U.S. Government through the State Department.

Mr. HALL. Who initiates that? Who initiates that discussion with our ambassador over there? Is it still Mansfield?

Mr. GLICK. Mansfield is in Japan.

Mr. HALL. He wouldn't do any good in China. But whoever is in China, has anybody ever contacted anybody over there to try to collect this money?

Mr. GLICK. Mr. Chairman, I think it is fair to say that the opportunity to attempt to recover from China has just occurred in recent years when we established normalization. We had no relationship with that government until 2 years ago. We have discussed this in great detail and with considerable intensity with the Department of the Treasury and with the Department of State, and with the previous administration as well as this administration. There is no legal judicial recourse for us with governments in this situations, and we will have to rely on what efforts we can undertake diplomatically.

It is possible in the case of China that that debt will be collected. I tried to indicate that there is a genuine difference of view about their obligation and what steps they have taken regarding debts that were incurred by the Chiang Kai Shek government.

With respect to Cuba, we still do not have diplomatic relations. The Export-Import Bank in that case has no recourse at the present time. We hope that some day those relations may be normal. We know that our claim is valid and binding, and possibly we will be able to recover. But we may not.

I must add that these two countries stand out virtually alone. I don't know of any other countries where we have made loans which have repudiated the debt or refused to pay the debt. Most of the Bank's loans are being repaid promptly with interest. Where we have entered into rescheduling, it has been done on a reasonable business basis either bilaterally or on a multilateral basis; and, in most cases, those debts are being serviced properly.

It is true in the case of Cuba and China we have difficulties.

Mr. HALL. Are we having any dealings at this time with any private entities in Cuba?

Mr. GLICK. No, sir, not the Export-Import Bank.

Mr. HALL. If you eliminate China, Cuba and Iran, what is the deliquency rate at this time to the bank?

Mr. LORD. On all other, the delinquency is 0.4 percent.

Mr. HALL. What does that dollar out to?

Mr. LORD. $57.7 million.

Mr. HALL. When I say delinquent, I believe you consider anything that is 90 days or more?

Mr. LORD. Correct.

Mr. HALL. This $57 million, where does that originate from?

Mr. LORD. Well, the largest is in Zaire; the next largest is in Poland; then it drops way down to Sudan, Nicaragua, Central African Republic, Uganda, Jamaica, Dominican Republic, Argentina—those are all a million or more—and down there from there.

Mr. HALL. Do you think as a representative of the Eximbank that it would be possible or advantageous to try to get some type of an agreement out of the American exporter as a last resort to try to collect these moneys?

Mr. LORD. I don't think it would be possible, Mr. Chairman. I think the long-term, foreign, particularly political risk is something that the private sector is in no position to undertake and has no means of negotiating against a foreign government in the event of a delinquency. The U.S. Government, through the Export-Import Bank has much more capacity to collect than a private company would.

The basic question in my mind, in terms of international trade and finance, is what is the appropriate role of government. I happen to believe that if you want to do export business of any kind, there are risks that the private sector cannot and will not and really should not be asked to undertake because they have no capacity to negotiate.

Mr. HALL. Are there any other countries that have a similar program as the Eximbank that operates here dealing with the U.S. Government or any other governments of the world?

Mr. LORD. Yes. All of the major Western and Japanese, and indeed a lot of the developing countries, now have export credit programs, both insurance and guarantee programs and loan programs. Some of them are patterned after the Eximbank, some of them having their own variations.

But the problem that we have from the standpoint, as I see it, of the U.S. Government and the Eximbank is that most of the other foreign government credit agencies, as a matter of national policy, operate like an entitlements program at subsidized rates. Our job is to try to neutralize that subsidy so that our American exporter can compete on market terms.

Mr. HALL. Do we at the present time in our dealings with any other countries that might have a similar banking setup as the Eximbank, are we indebted to any other country as maybe Cuba is indebted to us or as China is indebted to us? Do we owe any other country on a basis of that nature?

Mr. LORD. We as a Government or Eximbank?

Mr. HALL. Yes.

Mr. LORD. No, we do not as Eximbank. There are foreign holders of U.S. Treasury debts. In that sense, we are indebted to foreigners.

Mr. HALL. All right.

Mr. Shattuck has some questions he would like to ask.

Mr. SHATTUCK. Yes, Mr. Chairman. I believe, in response to Mr. Kindness' question, your counsel indicated that there is a limited impact on the bank potential, a potential impact, as a result of the provisions of this bill, the one that delineated what had to do with interest, the potential application of the interest and penalty provision. That provision has an exception I think would apply to your operation because it deals with loan agreements and that type of thing.

However, in section 3, there is a provision for offset which, by its terms, is general and government-wide. Would this have any impact at all?

Mr. GLICK. No, sir.

Mr. LORD. Not as we see it, no.

Mr. SHATTUCK. We welcome that comment. If, in the diplomatic relationship you just outlined, particularly where normalization of relations would have to do with claims agreements and claims settlements, which is just the subject we have been discussing, there could be some question concerning the application of this kind of automatic offset or potential offset—we would welcome the language that you suggested, Mr. Glick.

Mr. GLICK. Thank you, sir.

Mr. SHATTUCK. Thank you.

Mr. HALL. Mr. Kindness.

Mr. KINDNESS. Mr. Chairman, I just have one other question. It is my impression that Eximbank does not normally deal in transactions involving the sale of commodities, for example, grain; is that correct? Are there some variations on that theme?

Mr. LORD. As far as I know, that is correct, unless we have exporters with insurance policies who are exporting commodity-type products rather than manufactured products.

Mr. GLICK. We don't make any loans. We may have written some insurance policies for exporters, as Mr. Lord said.

Mr. KINDNESS. Thank you.

Mr. HALL. Is it a fair statement to say that the Eximbank's major clients are these eight corporations, four of which you mentioned earlier?

Mr. LORD. In the sense that they are the major U.S. exporters, and that is our business to export, yes. Westinghouse, let us say, wins a contract for a powerplant construction project in Indonesia and they are the prime contractor. But they subcontract the work to a large number of U.S. companies and businesses, large and small, that goes into the final product that Westinghouse ships. They happen to be the prime contractor, not the sole beneficiary in the sense of jobs and employment and businesses. So, it is the ripple effect, if you will.

I know from my experience in Hartford, Conn., with the Pratt & Whitney Aircraft Co. making engines for jet aircraft that will eventually end up oversees in a Boeing, McDonnell-Douglas or Lockheed plane, there were 2,000 subcontractors in the greater Hartford area, small machine shops, tool and die makers, et cetera, all of whom prospered when Pratt & Whitney prospered. If the business is going to a foreign seller, then American business and employment suffers. So, while the prime contractor is the one who signs the document, there are a lot more American companies involved in any of these major products.

Mr. HALL. Mr. McMahon, do you have any questions?

Mr. MCMAHON. I have no questions, Mr. Chairman.

Mr. HALL. Mr. Lord, thank you. We appreciate you three gentlemen being with us today. It is a complex problem, and we thank you for your testimony.

Mr. LORD. Thank you for your courtesy, sir.

Mr. KINDNESS. Mr. Chairman?

Mr. HALL. Yes.

Mr. KINDNESS. I present my apologies that I must absent myself for a little while. I will try to be back.

Mr. HALL. All right.

Our next witness is Mr. Dale Sopper. If you would come forward, sir, and proceed as you see fit. Would you identify the gentlemen who are with you?

TESTIMONY OF DALE W. SOPPER, ASSISTANT SECRETARY FOR MANAGEMENT AND BUDGET, DEPARTMENT OF HEALTH AND HUMAN SERVICES, ACCOMPANIED BY DAVID V. DUKES, DEPUTY ASSISTANT SECRETARY FOR FINANCE, OFFICE OF THE ASSISTANT SECRETARY FOR MANAGEMENT AND BUDGET, DEPARTMENT OF HEALTH AND HUMAN SERVICES; ROBERT MARDER, DIRECTOR, DEBT MANAGEMENT STAFF, SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND JACK MARKOWITZ, DEPUTY DIRECTOR, OFFICE OF MANAGEMENT, PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. SOPPER. Yes, sir. Mr. Chairman, I am Dale Sopper, Assistant Secretary for Management and Budget at the Department of Health and Human Services. I would like to introduce on my right Mr. David Dukes. Mr. Dukes is the Deputy Assistant Secretary for Finance in my office, and is the person who is responsible for, on my behalf, managing the debt policy activities in ASMB. On my left is Robert Marder. Mr. Marder is the Director of the Debt Management Staff at the Social Security Administration. On the far

left is Mr. Jack Markowitz. Jack is the Deputy Director of the Office of Management in the Public Health Service, and is the debt collection official for the Public Health Service in HHS.

I want to thank you, Mr. Chairman, for the opportunity to discuss the debt collection program in the Department of Health and Human Services this morning, and to comment on the Debt Collection Act of 1981, H.R. 4614.

I have a detailed statement which, without objection, Mr. Chairman, I would propose to enter into the record, and then just make some summary comments, allowing you the opportunity for more questions if you prefer.

Mr. HALL. It will be entered into the record.

Mr. SOPPER. The Department of Health and Human Services was owed $3.1 billion as of the quarter ending March 31, 1982. Of this amount, the Social Security Administration was owed $2.1 billion and the Public Health Service was owed $900 million. The remaining $100 million is distributed among the Department's other operating and staff divisions. SSA's debt consists mostly of overpayments to beneficiaries under its four major entitlement programs: Old age survivors insurance, disability insurance, black lung, and supplemental security income. The Public Health Service's debt consists mostly of amounts owed its health professions and nursing student assistance programs. Delinquent debt in the Department totaled $1 billion as of March 31, 1982.

Secretary Schweiker has placed a high priority on the Department's debt management initiative. We have a very comprehensive debt management program underway that includes all HHS components. Both he and I personally monitor the progress of this program to improve debt management and collection.

The Department has developed standard policies for charging interest and penalties and for using commercial collection agencies to collect delinquent debt.

If I might, Mr. Chairman, I would like to have entered into the record the memorandum which the Secretary issued today to the operating and staff divisions of HHS announcing this comprehensive Department policy with respect to interest and penalties and using commercial collection agencies. We do have copies.

Mr. HALL. It will be made a part of the record.

Mr. SOPPER. Thank you.

[The document referred to follows:]

99-306 O - 83 - 10

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

JUL 14 1982

MEMORANDUM FOR: Heads of Operating Divisions
Heads of Staff Divisions
Regional Directors

SUBJECT: Implementation of Policies for Charging Interest and Penalties and Using Commercial Collection Agencies

Attached for implementation are departmental policies on (1) charging interest and penalties on delinquent debts, and (2) using commercial collection agencies. These policies are in compliance with Treasury's guidelines pertaining to debt collection activities and the joint regulations issued on April 17, 1981, by the Attorney General and the Comptroller General. If OPDIVs must issue regulations in order to implement these policies, these regulations should be developed and issued as expeditiously as possible.

The policies on charging interest and penalties supersede the interest charging policies contained in the "Departmentwide Policies and Procedures for Controlling and Accounting for Debts Owed by the Public" previously issued by the Deputy Assistant Secretary, Finance, Office of the Assistant Secretary for Management and Budget. These policies consolidate but do not supersede those contained in Chapter 1-105 of the Grants Administration Manual and Chapter 4-70 of the General Administration Manual.

The attached policies are intended to (1) encourage debtors to give higher priority to repaying their Federal obligations, (2) provide incentive for prompt and timely payments, (3) reduce administrative time and effort required to collect accounts and loans receivable and monetary audit disallowance receivables, (4) reduce write-offs, and (5) reduce the need for referring uncollectible debts to the Department of Justice.

The cooperation of your staffs in providing comments toward the development of these policies has been most helpful and is greatly appreciated.

Richard S. Schweiker
Secretary

Attachments

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE SECRETARY

POLICIES ON CHARGING INTEREST AND PENALTIES AND USING COMMERCIAL COLLECTION AGENCIES

Office of Finance
Office of the Assistant Secretary
for Management and Budget

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE SECRETARY

POLICIES ON CHARGING INTEREST AND PENALTIES

Office of Finance
Office of the Assistant Secretary
for Management and Budget

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE SECRETARY
POLICIES RELATING TO THE USE OF COMMERCIAL COLLECTION AGENCIES TO COLLECT DELINQUENT DEBTS

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DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE SECRETARY
POLICIES ON CHARGING INTEREST AND PENALTIES

I. Introduction

As part of the Department's effort to improve and standardize Debt Management Policies, Procedures, and Practices, the following departmentwide policies for charging interest and penalties to delinquent debtors and debts paid by installment are promulgated for immediate implementation, including issuance of regulations where required, by all Operating Divisions (OPDIVs), Staff Divisions (STAFFDIVs) and Regional Offices.

II. Purpose

These departmentwide policies prescribe the manner in which the Department shall charge interest to delinquent debtors and debts paid by installment, and penalties for late payments. These policies are intended to (1) encourage debtors to give higher priority to repaying their Federal obligations, (2) provide incentive for prompt and timely payments, (3) reduce administrative time and effort required to collect accounts and loans receivable and monetary audit disallowance receivables, (4) reduce write-offs, (5) reduce the need for referring uncollectible debts to the Department of Justice for litigation, (6) compensate for lost income on funds which could have been invested, and (7) defray the cost of additional government borrowing.

III. Authority

The authority to impose an interest charge on delinquent debts and on unpaid balances of debts being paid in installments is contained in the Treasury Fiscal Requirements Manual (I TFRM 6-8000) and the Federal Claims Collection Standards (4 CFR Parts 101-105). The Federal Claims Collection Standards, issued jointly as an amendment on April 17, 1979, by the General Accounting Office (GAO) and the Department of Justice, establish the policy for charging interest to delinquent debtors. The Standards require that "in the absence of a different rule prescribed by statute, contract, or regulation, interest should be charged on delinquent debts and debts being paid in installments in conformity with the Treasury Fiscal Requirements Manual."

IV. Scope and Applicability

These policies prescribe the manner in which each of the Department's OPDIVs, STAFFDIVs, and Regional Offices shall charge interest and penalties (for late payments) to delinquent debtors and debts being paid in installments. A debt is any property or money owed to the Department. A debt arises when an organization or a person, such as a Departmental employee; recipient benefit overpayment; a person with a student loan or fellowship; a grantee or party to a cooperative agreement (both referred to here as assistee), or a contractor, receives something of value from the Department and fails to fulfill the resulting obligation to the Department. Examples are: an employee who obtains travel advance money and either is not entitled to retain it, or does not use it as authorized; an employee who is erroneously overpaid and knows or should know that it is a mistake and has exhausted administrative remedies trying to obtain a waiver of the debt; an assistee who improperly obtains funds from more than one agency to perform identical research; an assistee who uses funds for purposes not allowed under the grant or cooperative agreement; an assistee who defaults in performing the research or other project for which it received assistance; and a contractor or vendor which fails to perform the services or supply materials according to specifications in the contract or purchase order.

When an employee or assistee fails to repay money owed on a timely basis to the Department, interest will be charged on all late payments and those payments made in installments, unless a different rule, statute, contract or regulation prevails. These policies apply to all debts not fully resolved (i.e., not fully repaid, compromised or waived) within thirty (30) days of the request for repayment; including delinquent debts or debts repaid in installments or through check adjustments.

All accounts and loan receivable payments will be considered delinquent or late if not paid by the due date as specified in the initial notification of indebtedness, unless satisfactory payment arrangements have been made by the due date. The initial notification of indebtedness should include the current applicable rate as the approximate interest rate that will be assessed on the debt. Payment is considered due within thirty (30) days from the date of mailing the initial request for payment. The specific payment due date will be stated in the request for payment. The date of the letter and the date of mailing are to be the same. The date of payment shall be the date the envelope is received by the Department.

V. Background

For years debtors of the Government have not been charged interest on overdue accounts. The courts have established that Federal agencies may charge debtors interest on overdue accounts as long as the rate fairly compensates the Government, notice of the debt has been given to the debtor, and the amount of the debt is firm. Because the courts have held that interest begins to accrue only after notice of the debt has been given, interest may only be charged and collected on delinquent accounts and debts being paid in installments.

VI. Responsibilities

A. Office of the Secretary

1. The Assistant Secretary for Management and Budget (ASMB) is responsible for developing all Departmentwide policies associated with charging interest to delinquent debtors.

2. The Assistant Secretary for Management and Budget is responble for reviewing and approving all OPOIVs', STAFFDIVs' and Regional Offices' requests for exceptions or waivers to these policies.

3. The Deputy Assistant Secretary, Finance, Office of the Assistant Secretary for Management and Budget, will notify the OPDIVs/STAFFOIVs and Regional Offices of the percentage rate calculated by the Treasury Department and the Federal Reserve Bank through the quarterly TFRM bulletins, the monthly "Schedule of Certified Interest Rates With Range of Maturities" and the monthly Schedule of Treasury bill auction rate.

B. OPOIVs/STAFFOIVs and Regional Offices are Responsible for:

1. Implementing and enforcing these departmentwide policies for charging interest to delinquent debtors and debts being paid in installments, unless a different rule, statute, contract or regulation prevails.

2. Developing a system for promptly recording, collecting, reporting, and controlling interest due the Department on delinquent accounts and debts being paid in installments.

3. Providing notification in all their contracts, agreements, or other formal payment arrangements, except where prohibited by law, that interest will be charged for late payments.

4. Informing the debtor in initial notifications of amounts due (if these are not covered by contracts, agreements, or other formal payment arrangements): the basis for the indebtedness, the due date by which payment is to be made, that interest will be applied if payment is not received within thirty (30) days from the date of the initial request for payment, and the current applicable rate as the approximate rate that will be charged.

VII. Policies

A. Interest Charges on Overdue Lump Sum Payments, Late Installment Payments, Timely Installment Payments and Disputed Medicaid Claims

Interest assessed on overdue lump sum payments and late installment payments is a percentage reflecting the value of funds to Treasury. This percentage is communicated quarterly by the Treasury Department via the TFRM bulletins.

The interest rate charged on timely installment payments is the monthly "Schedule of Certified Interest Rate With Range of Maturities" published by the Treasury Department. The interest rate charged on

installment payments remains constant throughout the duration of the signed agreement. Should any of the periodic payments become overdue, a late charge based on the current value of funds rate (quarterly TFRM bulletin), will be applied to that particular delinquent payment in full.

The interest rate assessed on disputed Medicaid claims is the rate based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rates during such period. This rate is published monthly by the Federal Reserve Bank. The monthly schedule recaps the weekly rates of the prior month.

1. Interest will be charged starting from the payment due date (which will not be more than thirty (30) days from the date of the initial request for payment) to the date on which the payment is received. In the case of installment payments, interest will be charged from the date due to the date the installment payment is received. The full charge will also be applicable to periods of less than thirty (30) days for late payments and installment payments. This is consistent with Volume I, TFRM 6-8D2D.2D. Accounts receivable that are subject to administrative appeal and/or litigation by the debtor should be charged interest no later than 30 days from the date the debtor is initially notified of the debt. If the debtor appeals or litigates the amount owed, interest charges will not be billed to the debtor during the period of the appeal or litigation. If the debtor wins the appeal or litigation, the interest charges will be written off.

2. If a debt (including audit disallowances) is to be paid in one lump sum, the rate of interest that will be charged is the current prevailing rate prescribed by Treasury, unless a different rule, statute, contract or regulation prevails. The percentage rate that shall be used will be transmitted quarterly in the Treasury Fiscal Requirements Manual (TFRM) bulletins prior to the first day of each calendar quarter for application to overdue payments during the succeeding calendar quarter.

3. If a lump sum demand debt is converted to an installment agreement, contract or other formal payment arrangement, the DPDIVs/ STAFFDIVs and Regional Offices have the option:

   - To make the accrued late charges due and payable at the time the installment agreement, contract or other formal payment arrangement is consummated; or

   - To balloon the initial installment payments so that a portion of each payment is applied to the accrued late charges, current interest and principal, provided the late charge is in addition to the regular installment payments for "X" months.

4. If a debt (including audit disallowances) is paid in installments, the rate of interest that will be charged is the rate that is published in the Treasury Department's monthly "Schedule of Certified Interest Rate with Range of Maturities" at the time the installment agreement is made; unless a different rule, statute, contract or regulation prevails. An individual financial profile should be developed prior to the signing of an agreement, contract or other formal payment arrangement to determine a debtor's ability/inability to pay.

   Installment agreements, contracts or other formal payment arrangements may not provide a grace period for installment payments. A late charge will be applied to the overdue payment for the full thirty (30) day period after the due date. If an installment payment is past due the entire debt should become due and payable, with interest. Prudence should be exercised before "ballooning" a defaulted agreement, contract or other formal payment arrangement. The balloon clause should be used as a last resort because demand for the entire debt balance may result in an increase in accounts and loans receivable write-offs. Factors to consider before demanding an entire debt balance are:

   1. Debtor's past payment history on repayment agreement;

   2. Change in debtor's financial condition;

   3. Size of debt; and

   4. Working out a new repayment schedule by lowering the amount of the monthly installments.

5. If a State agency disputes a Medicaid claim, the amount of the Federal payment in controversy shall, at the option of the State agency, be retained or recovered by the OPDIV pending final determination. If the final determination upholds the disputed amount, and the State agency chose to retain payment of the amount in controversy, the OPDIV shall offset from any subsequent payments made to the State agency. The offset shall include an amount equal to the disputed amount plus interest for the period beginning on the date of the disallowance and ending on the date of the final determination. The interest rate assessed is the rate based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rates during such period. This rate is published monthly by the Federal Reserve Bank. The monthly schedule recaps the weekly rates of the prior month. This requirement is consistent with P. L. 96-499, 42 U.S.C. 1396b.

6. Grantees who are charged with a disallowance for failure to fully match the Federal funds expended will be charged interest on the unmatched Federal portion which remains unmatched 30

days following the date of the determination letter. The disallowance will be recorded as an installment receivable if a repayment agreement is reached during the 30-day notification period before the debt becomes delinquent. Interest on repayment agreements shall be computed on the same basis as an installment or extended payment plan. If the grantee elects not to or fails to enter into a repayment agreement within 30 days of notification of the disallowance interest will be assessed on the full amount of the disallowance at the interest rate prescribed by Treasury's quarterly bulletins. All interest charges must be paid monthly by funds raised from non-Federal sources.

For example:

If the recipient has failed to match $2,000 (in a program involving, for example, 80 percent Federal and 20 percent non-Federal matching funds), but has disbursed all the Federal funds, an audit or program disallowance on Federal funds of $8,000 will be sustained. If the recipient plans to repay $500 a month (or equivalent in-kind contributions) for four months and if the Treasury interest rate for a four-month note (120 days) is 12% per annum, the computation of interest would be as follows:

Agreement Schedule to Provide Services-in-kind
to Earn Matching Eligibility to Federal Funds Suspended
For the Period October 1, 1982 through January 31, 1983

	Contribution of Non-Federal Funds		Federal Funds Suspended		Interest on Federal Funds 1/
	Provided	Balance	Earned	Balance	
Amounts due		$2,000		$8,000	
Amount provided					
October 1982	$ 500	$1,500	$2,000	6,000	$ 80 2/
November 1982	500	1,000	2,000	4,000	60
December 1982	500	500	2,000	2,000	40
January 1983	500	-0-	2,000	-0-	20
	$2,000	-0-	$8,000	-0-	$200

1/ Interest at 12% per annum equals 1% per month. These amounts must be paid in cash each month not later than the end of each monthly period.

2/ Additional interest on $8,000 would be charged from 30 days following the date of the Agreement/Determination letter until a repayment schedule is agreed to, if a repayment agreement is not established within this 30-day period.

The interest assessed shall be based on the monthly "Schedule of Certified Interest Rate With Range of Maturities" over the length of time over which payments will be made according to the extended payment plan. It shall be based on the period of time the recipient plans to contribute the non-Federal matching funds. The interest rate shall normally be charged on a basis of planned repayments in 30-day increments over a negotiated period of months. Upon receipt of the interest payments, the finance office will also reduce the principal debt receivable by the proportionate share or the planned share of the Federal disallowance. If the total contribution is not provided within the planned time the interest charges shall be recomputed to reflect the actual contribution pattern together with the plan for the principal balance and interest still due. The recipient must take the necessary action to raise the cash necessary to cover the contributions and interest payments and forward the payments every 30 days.

7. The interest rate to be assessed for both late payments and installment payments will be computed as simple interest using a 360-day year. Simple interest is interest that is paid on the original principal balance. See Examples on Computing Interest, pages 9-12.

8. Interest charges will not be prorated on a daily basis for overdue payment received during the month (i.e., 10, 15, or 20 days late). Interest will be assessed for the full 30-day period.

B. Accounting and Reporting of Interest Received

1. Accrued interest will be recorded at the document level (i.e., contract, agreement/determination document or grant number that the charges apply to) and reported at the appropriation level.

2. Accrued interest must be reported by all OPDIVs/STAFFDIVs and Regional Finance Offices on a quarterly basis on Schedule 9, SF-220 "Report and Status of Accounts and Loans Receivable Due From the Public" as required under Treasury Bulletin No. 81-08 (effective September 30, 1981).

3. A partial late payment is an amount received that is less than the pre-established payment amount. For late full or partial late payments, the amount received is first applied to any accrued late charges, not yet paid, then to the interest charge on the principal and then to the payment of the principal, unless a different rule is prescribed by statute or regulation.

4. When a debt is paid in installments, the installment payment will first be applied to any accrued late charges, not yet paid, then to the accrued interest and then to the payment of the principal, unless a different rule is prescribed by statute, contract or regulation.

5. The total amount of charges collected for late payments shall be credited to miscellaneous receipt account 75I499, "Miscellaneous Interest Collections Not Otherwise Classified," unless there is statutory authority to otherwise account for these collections. These funds will be deposited into the Treasury as miscellaneous interest income not otherwise classified and are not available for disbursement purposes.

6. The accounts receivable for accrued interest shall be established under the same expenditure account that the debt claim is related to, even though the interest collection will be deposited to miscellaneous receipts.

C. Termination of Interest Charges

1. The OPOIVs/STAFFOIVs and Regional Finance Offices should stop accruing interest charges once all the administrative collection actions have been taken in accordance with 4 CFR Part I02, Chapter II, Federal Claims Collection Standards, and the Claims Collection Officer makes a determination to terminate collection action in accordance with 4CFR Part 104, Standards for Suspending or Terminating Collection Action.

2. Accrued Interest should be written off in accordance with Oepartmental procedures for writing off debts once the collection of the associated receivable has been terminated.

0. Waiver of Interest Charges

1. The OPOIVs/STAFFOIVs and Regional Finance Offices may at their discretion waive the collection of interest charges if they determine that the administrative cost of collecting these charges exceeds the amount of the charges. However, the criteria for such determination must be reflected in the OPDIVs and STAFFOIVs cash management regulations (I TFRM 6-8080-20) as implemented in Chapter IO-40 of the Oepartmental Accounting Manual.

2. All OPOIVs/STAFFOIVs and Regional Finance Offices shall analyze collection costs periodically to ensure the cost of collecting interest does not exceed recoveries.

E. Delegation of Authority Required Under the Federal Claims Collection Act

Only one who has written delegated authority may approve a compromise, suspension or termination of a claim and then only if the claim is $20,000 or less. Resolution of claims over $20,000 requires the concurrence of GAO.

F. Oelegation of Authority by the Secretary under the Federal Claims Collection Act

1. The Secretary has delegated to the Department Claims Officer, who is the Assistant General Counsel, Business and Administrative Law Oiwsion, the authority to perform the duties and exercise the

authority vested in the Secretary by the Federal Claims Collection Act of 1966, 31 U.S.C. 951-953, as amended, to collect claims in any amount; to compromise, suspend or terminate collection action in claims of $2D,DDO or less, exclusive of interest; and to issue rules and procedures for investigating, reporting and otherwise handling claims throughout the Department. (31 FR 16375, 12/14/66). The Department Claims Officer has redelegated this authority. As explained under F.2 and F.3, there is a concurrent delegation of such authority from the Secretary to two Operating Oivisions.

2. The Secretary has delegated to the Commissioner of Social Security the authority vested in the Secretary under the Federal Claims Collection Act (33 FR 5836, 5843, 4/16/82), insofar as such authority relates to the mission of the Social Security Administration.

3. The Secretary has delegated to the Administrator of Health Care Financing Administration the authority vested in the Secretary under the Federal Claims Collection Act (42 FR 57352, 11-2-77; 42 CFR 4D5.374), insofar as such authority relates to the mission of the Health Care Financing Administration.

G. Further Oelegation of Authority by the Oepartment Claims Officer

The authority of the Department Claims Officer is delegated to the following officials within the scope identified:

1. The Oeputy Assistant General Counsel, Business and Administrative Law Division, Office of the General Counsel (Departmentwide).

2. The Chief, Litigation and Claims Branch, Business and Administrative Law Division, Office of the General Counsel (Oepartmentwide).

3. The Regional Attorneys (Region-wide) except for claims relating to Titles II, XVI and XVIII of the Social Security Administration and the Public Health Service.

4. The Assistant Secretary for Health, insofar as such authority relates to the mission of the Public Health Service.

H. Exclusions and Waivers

Any existing statutes, regulations or standard terms of loan, contract, grant or cooperative agreement awards which are not consistent with this policy must be documented in writing by the principal management official of the OPOIV, STAFFDIV or Regional Office to the Deputy Assistant Secretary, Finance, Room 705D, Hubert H. Humphrey Building, 200 Independence Avenue, S. W., Washington, O. C. 202D1. The exception must include the name and description of the program and/or type of receivable as to why the policies contained herein cannot or should not be followed. The DASF cannot grant exceptions or waivers to requirements of statutes, contracts or regulations.

I. Examples on Computing Interest

The interest rate to be assessed for both late payments and installment payments will be computed as simple interest using a 360-day year.

Examples of Interest Charges

Principal	Late Lumpsum Payments 1/ Full Payment 60 Days	Late Lumpsum Payments 1/ Full Payment 90 Days	Length of Repayment Plan in Months	Installment Payments 3/ Interest Rate 2/	Installment Payments 3/ Monthly Installment	Amount Repaid Total	Amount Repaid Interest
$ 200	$ 203.06	$ 206.12	12	15 3/4	$ 18.12	$ 217.44	$ 17.44
			24	15 7/8	9.78	234.72	34.72
			36	15 3/4	7.01	252.36	52.36
$ 600	609.18	618.36	12	15 3/4	54.37	652.44	52.44
			24	15 7/8	29.34	704.16	104.16
			36	15 3/4	21.02	756.72	156.72
$2,000	2,030.58	2,061.77	12	15 3/4	181.23	2,174.76	174.76
			24	15 7/8	97.81	2,347.44	347.44
			36	15 3/4	70.07	2,522.52	522.52
$5,000	$5,076.46	$5,152.92	12	15 3/4	453.06	5,436.72	436.72
			24	15 7/8	244.52	5,868.48	868.48
			36	15 3/4	$175.17	$6,306.12	$1,306.12

1/ Late Lumpsum Interest Charge based per I TFRM Bulletin for the quarter ended December 1981 18.35 percent - 12 = .015292.

2/ Interest Rates based on Treasury's Monthly Schedule of Certified Interest Rates with Range of Maturity for November 1981.

3/ Interest Computed on Monthly unpaid balance.

18 Percent Annual Interest

Payment Number	Principal	Monthly Interest (1.5%)	Monthly Payment	Payment Toward Principal Due	Adjusted Principal Oue
1	$800.00	$12.00	$ 60.00	$ 48.00	$752.00
2	752.00	11.28	60.00	48.72	703.28
3	703.28	10.55	60.00	49.45	653.83
4	653.83	9.81	60.00	50.19	603.64
5	603.64	9.05	60.00	50.95	552.69
6	552.69	8.29	60.00	51.71	500.98
7	500.98	7.51	60.00	52.49	448.49
8	448.49	6.73	60.00	53.27	395.22
9	395.22	5.93	60.00	54.07	341.15
10	341.15	5.12	60.00	54.88	286.27
11	286.27	4.29	60.00	55.71	230.56
12	230.56	3.46	60.00	56.54	174.02
13	174.02	2.61	60.00	57.39	116.63
14	116.63	1.75	60.00	58.25	58.38
15	58.38	.88	59.26	58.38	-0-
16	-0-	-0-	-0-	-0-	-0-
	Totals	$99.26	$899.26	$800.00	

Examples of Interest Charges
on Monthly Unpaid Balances
15.75 Percent Annual Interest

NO.	OATE	PAYMENT	PRINCIPAL	INTEREST	BALANCE	OAYS
	01NOV81				$600.00	[15.75%]
1	01OEC81	$54.38	$46.50	$7.88	553.50	30
2	01JAN82	54.38	47.12	7.26	506.38	30
3	01FEB82	54.38	47.73	6.65	458.65	30
4	01MAR82	54.38	48.36	6.02	410.29	30
5	01APR82	54.38	48.99	5.39	361.30	30
6	01MAY82	54.38	49.64	4.74	311.66	30
7	01JUN82	54.38	50.29	4.09	261.37	30
8	01JUL82	54.38	50.95	3.43	210.42	30
9	01AUG82	54.38	51.62	2.76	158.80	30
10	01SEP82	54.38	52.30	2.08	106.50	30
11	01OCT82	54.38	52.98	1.40	53.52	30
12	01NOV82	54.22	53.52	0.70	0.00	30

AMOUNT BORROWED = 600.00
TOTAL INT = 52.40
TOTAL REPAIO = 652.40

11 PAYMENTS OF = 54.38
FINAL PAYMENT = 54.22 ON 01NOVB2

Note: Interest rate of 15.75% based on Treasury's Monthly Schedule of Certified Interest Rates With Range of Maturities for November 1981.

99-306 O - 83 - 11

POLICIES RELATING TO THE USE OF COMMERCIAL COLLECTION AGENCIES TO COLLECT DELINQUENT DEBTS

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE SECRETARY

POLICIES RELATING TO THE USE OF COMMERCIAL COLLECTION AGENCIES TO COLLECT DELINQUENT DEBTS

Office of Finance
Office of the Assistant Secretary
for Management and Budget

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DFFICE OF THE SECRETARY
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DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE SECRETARY
POLICIES RELATING TO THE USE OF
COMMERCIAL COLLECTION AGENCIES
TO COLLECT DELINQUENT DEBTS

I. INTRODUCTION

As part of the Department's effort to improve and standardize Debt Management Policies, Procedures and Practices, the Assistant Secretary for Management and Budget has developed departmentwide policies relating to the use of commercial collection agencies to collect defaulted and delinquent loans and accounts receivable. These policies are to be implemented immediately by all Operating Divisions (OPDIVs), Staff Divisions (STAFFDIVs) and Regional Offices.

II. PURPOSE

These departmentwide policies prescribe the circumstances under which the Department shall use commercial collection agencies to collect defaulted and delinquent loans and accounts receivable. These policies are intended to reduce or minimize losses on uncollectible debts and the volume of referrals of collection matters to the Department of Justice for litigation.

III. AUTHORITY

The authority to contract with commercial sources, such as collection agencies, for collection services is contained in the Federal Claims Collection Standards (4 CFR Part 102 - Standards for the Administrative Collection of Claims; Contracting for Debt Collection Services). These standards provide that contracts may be entered into for collection services when they meet the following conditions: (a) the service must supplement, but not replace, the basic collection program of the agency; (b) the authority to resolve disputes, compromise claims, terminate collection action, and initiate legal action must be retained by the agency and; (c) the contractor shall be subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, and, when applicable, to Federal and State laws and regulations pertaining to debt collection practices such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692.

IV. SCOPE AND APPLICABILITY

These policies supplement the Federal Claims Collection Standards regarding contracting for debt collection services. The policies set forth the basic conditions that commercial collection services contracts must meet in the collection of the Department's delinquent debts. These policies apply to all collection services procurements by OPDIVs, STAFFDIVs and Regional Offices.

V. BACKGROUND

The General Accounting Office (GAO) concluded in its report entitled "The Government Can be More Productive in Collecting its Debts by Following Commercial Practices," that the Federal Government can better collect its debts and recover billions of dollars by adopting certain commercial practices, specifically, the use of commercial debt collection agencies to collect debts. Traditionally, the GAD has ruled that Federal agencies cannot legally use commercial contractors for the collection of government debts. However, on April 17, 1981, the General Accounting Office (GAO) and the Department of Justice amended the Federal Claims Collection Standards by adding a provision that allows Federal agencies to contract for collection services in recovering debts owed the United States. GAO modified its original legal opposition to the use of commercial sector collection agencies and has indicated that use of collection agencies would be permissible as long as the Federal agency head retains ultimate responsibility and control over the debts. This includes retaining authority to compromise, litigate or terminate amounts due and to resolve issues relating to the validity of the debt.

VI. RESPONSIBILITIES

A. Office of the Secretary

The Assistant Secretary for Management and Budget (ASMB) is responsible for:

1. Establishing policies and procedures for the collection of debts.

2. Developing departmentwide policies associated with the decision to use contracting for collection services.

B. OPDIVs/STAFFDIVs and Regional Offices

OPDIVs/STAFFDIVs and Regional Offices are responsible for:

1. Implementing and enforcing departmentwide policies on contracting for collection services.

2. Establishing collection procedures and prescribing criteria for collecting, compromising, suspending, or terminating collection action and for referring claims to GAO and the Department of Justice.

3. Taking aggressive action, on a timely basis with effective follow up, to collect amounts due the Department.

4. Submitting a justification of the need to contract for collection services to ASMB before preparing a procurement planning document and, at the same time, providing a certification that the various collection actions called for by the Federal Claims Collection Standards and HHS' regulations will be completed before referring

debts to a collection agency. The certification must be approved by the Debt Management Official. (See Attachment for Certification of Attempts to Collect Oebts.)

5. Submitting a copy of the collection services request for proposals and a copy of the contract(s) to ASMB within ten (10) days of award.

VII. POLICIES

A. General

OPDIVs/STAFFDIVs and Regional Offices shall consider contracting for collection services to collect defaulted and delinquent loans and accounts receivable. Collection services must supplement, not replace, the basic collection program of the OPOIVs/STAFFOIVs and Regional Offices. The basic policies concerning contracting for collection services are as follows:

1. OPOIVs'/STAFFOIVs' and Regional Offices' justifications to contract for collection services must include information on the following:

   a. Explain the reasons for contracting for collection services;
   b. Explain the attempts taken to collect the debts and provide a certification to this effect;
   c. Explain why the debts cannot be collected by HHS but hold promise for results through a collection agency;
   d. Describe the types of debts proposed for referral to a collection agency;
   e. Estimate the number of accounts that will be assigned to a collection agency;
   f. Identify the total value of debts to be assigned to a collection agency, and the range and average value of the debts;
   g. Estimate the total cost of the proposed contract and all the associated costs (i.e., an estimate of the cost of technical staff, program and project officers, lawyers, contracting officers, etc.); and
   h. Estimate the amount of recoveries. (Anticipated recoveries must exceed the cost of the contract and associated cost.) (See Item G above.)

2. All OPOIVs/STAFFOIVs and Regional Offices shall contract for collection services only after recovery has been attempted through in-house efforts. The Federal Claims Collection Standards (4 CFR 102 - Standards for the Administrative Collection of Claims; Contracting for Oebt Collection Services), together with any other administrative remedy which may be available for the collection of debts before contracting for collection services.

3. OPOIVs'/STAFFDIVs' and Regional Offices' contracts for collection services shall conform with the standards set forth in the Federal Procurement Regulations (41 CFR) and the HHS Procurement Regulations (41 CFR).

B. Guide to Preparation of the Request for Proposal and Contract

1. The major aspects and activities of the collection process that shall be addressed in the request for proposal (RFP) and contracts for collection services are summarized below:

   a. Computer support;
   b. Receipt of accounts (number of accounts, account characteristics, account selection and transfer of accounts);
   c. Minimum account resolution standards by category of accounts;
   d. Resolution of complaints;
   e. Documentation of collection activity;
   f. Management reports;
   g. Billing debtors;
   h. Receipt and processing of repayments including return of the full collection to HHS;
   i. Return of accounts to HHS;
   j. Period of performance; and
   k. Collection fee schedule and payment procedure by HHS.

2. All RFP and contracts for collection services shall address any special requirements of the contract. Examples of some special requirements are:

   a. The contractor's system support requirements;
   b. Pick-up and delivery of materials;
   c. Anticipated delays in providing the services;
   d. Use of branch offices or subcontractors; and
   e. Facilities, equipment, supplies and material.

3. All RFPs and contracts for collection services must address the OPDIVs'/STAFFDIVs' or Regional Offices' obligations under the contract. For example, what items will be made available to the contractor (transfer tapes or reports, account sheets, activity cards, etc.), what on-site monitoring will be done under the contract, and what inspections will be performed.

4. All contracts for collection services must include an explanation of the contractor's schedule of deliverables. This explanation shall include the requirements or items to be delivered and the time frame from award of contract when these will be delivered.

C. Basic Conditions for Collection Services Contracts

All RFPs and contracts for collection services must include conditions that:

1. The authority to resolve disputes, compromise claims, terminate collection action, and initiate legal action is retained by the Department. The contractor shall be required to return to the Department all claims which it recommends for compromise or termination.

2. The contractor shall be subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, and, when applicable, to Federal and State laws and regulations pertaining to debt collection practices such as the Fair Debt Collection Practices Act of 1977 (15 U.S.C. 1692).

3. The contractor must agree to indemnify, defend and hold the Federal Government free and harmless from all liability, loss, damages, claims and other expenses, including attorney's fees and court costs, resulting from the contractor's performance under the contract.

4. The contractor shall ensure that the data in its system is used exclusively for collection activities related to the DPDIV/STAFFDIV or Regional Office transferred accounts. The information shall not be accessed by the contractor in connection with any other collection efforts on the same debtor under another contract or agreement. Secure safekeeping facilities must be maintained by the contractor for account files. Review of the contractor's compliance with established procedures will be conducted by DPDIV/STAFFDIV and Regional Offices via on-site visits.

5. The contractor's collection practices must be fair and reasonable, and must not involve harrassment, intimidation, and false or misleading representations. Review of the contractor's collection practices should be conducted by the DPDIV/STAFFDIV or Regional Office to determine compliance with the Fair Debt Collection Practices Act of 1977 (15 U.S.C. 1692).

6. The contractor shall provide information to the project officer to resolve complaints of harrassment, intimidation, false or misleading representation, or unnecessary communications, raised by debtors against the contractor's collection practices. The procedures for resolution of complaints shall be provided in the contract.

7. The OPDIV/STAFFDIV and Regional Office shall retain authority and oversight over the collection methods employed by the contractor.

8. Each contractor employee assigned to the contract shall receive training relevant to the Privacy Act of 1974, and the contractor shall certify that the employee has received it, before the employee begins any collection activity on HHS' accounts. (The contract shall contain a sample form of the acknowledgement of training.)

9. The contractor must obtain prior approval of the formats of letters, bills and other material he proposes to use in the contract. Also the contractor shall obtain the Project Officer's prior approval of all form letters he proposes to use for skip tracing.

10. The contractor shall record all collection activity (skip trace attempts, written and verbal contacts with the debtor or his representative, payment information, and other pertinent data) taken on each account.

11. The contractor shall propose a quality control plan that will insure the effectiveness and efficiency of its operations. The contractor shall implement, upon final approval by the contracting officer, the quality control plan designed and proposed by the contractor in response to the RFP. The quality control plan shall include the monitoring of day-to-day collection activities against performance specifications and the closing of accounts against production standards. The quality control plan shall include, but shall not be limited to the major activities of the collection process listed in Section VII. B. 1.

12. The OPOIV/STAFFOIV or Regional Office will select the accounts to be transferred to the contractor and the procedures that will be followed in these selections, e.g., accounts where the Government has not been able to collect will be turned over first.

13. The contractor shall return to the OPDIV/STAFFDIV or Regional Office ineligible accounts that have been inadvertently transferred for collection, with appropriate documentation within thirty (30) calendar days of identification of such an account. (The RFP and contract must specify which type of accounts are ineligible for transfer to the contractor, i.e., accounts involved in bankruptcy proceedings and accounts referred to the Department of Justice, etc.).

14. The contractor must systematically resolve all accounts transferred to it. This involves:

    a. Working all accounts in accordance with the terms and conditions included in the contract.
    b. Expending a level of effort which is equal to or exceeds the "Minimum Account Resolution Standards" which shall be specified in the contract.
    c. Providing information to the OPDIV/STAFFOIV or Regional Office to resolve complaints.
    d. Maintaining a record of all activities taken on each account.
    e. Producing on at least a monthly basis management and fiscal reports to monitor contractor's performance, as specified in the contract.

15. The contractor shall process accounts in accordance with the account processing schedule incorporated in the contract. The processing schedule shall be documented and shall cite, for example, the maximum number of workdays before each typical account shall be moved from one collection step to the next and shall also cite backlogs at any given processing step.

16. The contractor shall suspend collection activity on a account and refer the issue to the OPDIV/STAFFOIV or Regional Office for resolution within ten (10) working days after any of the

suspension conditions as cited in the contract occur. Suspension of collection activity include, but are not limited to, the following conditions:

a. The debtor disputes the amount owed;
b. The debtor raises a legal defense against repayment;
c. The debtor wishes to compromise the amount due or request forebearance due to temporary inability to repay; and
d. The debtor provides evidence that the debt has been satisfied.

17. The contractor shall use contractor prepared bills for billing the debtors, the format of which have been approved by the project officer. (The contract shall specify requirements concerning billing the debtors.)

18. The contractor will not, under any circumstances, adjust the balance of an account for any reason without prior approval from the OPOIV/STAFFOIV or Regional Office.

19. The contractor shall receive and process repayments and ensure the security of monies received in accordance with the terms and conditions of the contract. The contractor will not be permitted to retain its fees and only remit the net collected to HHS. The full collection will be turned over or paid to HHS and HHS will pay the fees directly to the contractor. The contractor shall direct debtors to submit payments (checks, money orders, etc.), made payable solely to HHS, not the contractor under any circumstances. (The terms and conditions for receipt and processing of repayments should be specified in the RFP and contract.)

20. All accounts shall be worked to the level of effort specified in the "Minimum Account Resolution Standards" before they are returned to the OPOIV/STAFFOIV or Regional Office as specified in the RFP and contract.

21. The RFP and the contract shall cite the conditions for which the contractor will be paid, and that the contractor will not be paid for unidentified repayments or payments from the debtors received on any account after it has been transferred back to HHS.

22. The contractor shall accomplish an orderly transfer of all outstanding accounts and all documentation back to the project officer upon expiration of the contract. (The contract shall specify the time schedules and other requirements for contract phase-out.)

VIII. BASIC COLLECTION STEPS AND PROCEDURES

The OPDIVs/STAFFDIVs and Regional Offices are required to take aggressive action to collect delinquent debts before contracting for commercial collection services. Agencies should employ cost-effective

procedures, consistent with good business practice that will lead to the collection of the debt.

Collection steps and procedures may vary depending on the size and type of debt and mitigating circumstances; however, all basic collection programs should comply with the Federal Claims Collection Standards (4 CFR, Chapter II, Parts 101-105). All OPDIVs/STAFFDIVs and Regional Offices should at a minimum:

A. Provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to the points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken. Cost and recovery data should also be useful in justifying adequate resources for an effective collection program.

B. Maintain physical and accounting control of claims and document collection actions. (All collection actions should be documented and the documentation should be retained in the claims file or computer system documentation file.)

C. Take appropriate action to locate missing debtors. The following sources should be utilized: telephone directories, city directories, postmasters, driving license records, automobile titles and license records (state and local government agencies), District Directors of Internal Revenue, relatives, friends and credit bureau agency skip locator reports.

D. Provide appropriate written demands to debtors, informing them of the consequences of failure to pay. (In the initial notification, the debtor should be informed of the basis for the indebtedness, the applicable requirements or policies for charging interest, and the date by which payment is to be made.) Three progressively stronger written demands, at not more than 30-day intervals, should normally be made, unless circumstances indicate this is useless (for example, where the debtor explicitly refuses to pay, or clearly cannot pay) and alternative remedies would better protect the government's interest. The third demand letter should be sent by certified mail, return receipt requested. If a debtor fails to pay by the date specified in the third demand letter, a final letter should be sent to state that the debt is being turned over to a third party for collection.

E. Develop a system for aging accounts receivable and periodically (at least monthly) monitor outstanding debts in order to prevent, as far as possible, the creation of new delinquencies and the prolonging of old ones.

F. Take aggressive collection action against the debtors with consideration being given to:

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1. personal interviews with debtors;
2. use telegrams, phone calls, and other forms of attention getting communications;
3. contacts with the employer of the debtor;
4. charging of interest;
5. liquidation of collateral, if held;
6. suspension or cancellation of licenses or other privileges;
7. exploration of compromise;
8. collection in installments;
9. collection by offset, where feasible;
10. temporary suspension of collection action where the future prospects of the debtor to repay looks good or where future offset is possible.
11. referral to claims collection office;
12. referral to GAO;
13. referral to Department of Justice; and
14. write-off.

ATTACHMENT

Certification of Attempts to Collect Debts

This certifies that the following basic collection steps and procedures have been followed in futile attempts to collect the Department's debts:

- o Debtors were officially notified of the indebtedness. ___Yes ___No
  If no, please explain. (Section VIII, Item D)

- o Three demand letters for payment were sent to the debtors. ___Yes ___No
  If no, please explain. (Section VIII, Item D)

- o Debtors ability to pay has been determined. ___Yes ___No
  If no, please explain. (Section VIII, Item D)

- o The prospect of the debtor's ability to repay appears promising.
  ___Yes ___No If no, please explain. (Section VIII, Item D)

- o The debtor's employer has been contacted. ___Yes ___No
  If no, please explain. (Section VIII, Item F)

- o These sources have been utilized to locate missing debtors. _____
  _____ (Section VIII, Item C)
  _____
  _____
  _____
  _____

OPDIV/STAFFDIV _____ NAME _____

DATE _____ TITLE _____

Mr. SOPPER. Accounting control over debt has been established in all operating components. Also, systems are being enhanced to insure that we know the amount of all debt owed and its age.

In addition, the Secretary transmitted to Congress on July 12 a draft bill which would permit disclosure from tax records of the addresses of individuals who have defaulted on health education loans. Again, Mr. Chairman, we have copies of that draft available and, without objection, would appreciate having that entered into the record.

Mr. HALL. It will be made a part of the record.

Mr. SOPPER. Thank you.

[The document referred to follows:]

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, D.C., July 12, 1982.

Hon. THOMAS P. O'NEILL, Jr.
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Enclosed for consideration by the Congress is a draft bill "To permit disclosure from tax records of the addresses of individuals who have defaulted on health education loans".

The draft bill would permit this Department and lenders to obtain from tax records the addresses of individuals who have defaulted on loans under the Health Education Assistance Loan (HEAL) Program or on health professions schools' loans that have been supported with Federal funds. Such disclosures are permitted to the Department of Education and to lenders in relation to loan defaults under the jurisdiction of that Department.

We urge the Congress to give the draft bill its prompt and favorable consideration.

We are advised by the Office of Management and Budget that enactment of this draft bill would be consistent with the Administration's objectives.

Sincerely,

DICK SCHWEIKER,
Secretary.

Enclosures.

A B I L L

To permit disclosure from tax records of the addresses of individuals who have defaulted on health education loans.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Short Title

Section 1. This Act may be cited as the "Loan Default Information Amendment of 1982".

Disclosure of Location of Borrowers Who Have Defaulted on Health Education Loans

Sec. 2. Paragraph (4) of section 6103(m) of the Internal Revenue Code of 1954 is amended --

(1) by inserting "or the Secretary of Health and Human Services" after "Secretary of Education" in the matter in subparagraph (A) preceding clause (i) and in the matter of subparagraph (B) preceding clause (i),

(2) by striking out "or" at the end of clause (i) of subparagraph (A) and of subparagraph (B),

(3) by adding "or" at the end of clause (ii) of subparagraph (A) and of subparagraph (B),

(4) by inserting the following after clause (ii) of subparagraph (A):

"(iii) made under part C of title VII or part B of title VIII of the Public Health Service Act,",

(5) by inserting the following after clause (ii) of subparagraph (B):

"(iii) any lender participating under part C of title VII or part B of title VIII of the Public Health Service Act,", and

(6) by inserting "or the Department of Health and Human Services" after "Department of Education" in the matter in subparagraph (A) following clause (iii) (as added by paragraph (4) of this section).

Mr. SOPPER. The legislative changes contained in H.R. 4614 and in complementary bills now pending in the House and Senate are essential to a strengthened debt collection program for HHS and other Federal agencies.

My detailed statement, of course, addresses each section of the bill and what it would do to strengthen HHS debt management initiatives.

Restrictive Federal law that prevents the use of collection tools and techniques used effectively in the private sector must be amended in order to eliminate the impediments that presently exist in the Department's and the Federal Government's debt collection program. We are supportive of your efforts, Mr. Chairman.

That concludes my remarks. I would be pleased, along with my colleagues, to answer any questions you have.

[The statement of Mr. Sopper follows:]

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The legislative changes contained in H.R. 4614 and in complementary bills now pending in the House and Senate are essential to a strengthened debt collection program for HHS and the other Federal agencies. My detailed statement addresses each section of the bill and what it will do to strengthen HHS' debt management initiative. Restrictive Federal laws that prevent the use of collection tools and techniques, used effectively in the private sector, must be amended in order to eliminate the impediments that presently exist in the Department's and the Federal Government's debt collection program.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Introduction

I want to thank you for the opportunity to discuss the debt collection program in the Department of Health and Human Services (HHS), and to comment on the Debt Collection Act of 1981 (H.R. 4614).

Outstanding Debt Owed HHS

I would like to begin by briefly describing the amount and nature of the debt owed to HHS.

The Department was owed $3.1 billion as of the quarter ended March 31, 1982. Of this amount, the Social Security Administration (SSA) was owed $2.1 billion and the Public Health Service (PHS) was owed $.9 billion. The remaining $100 million is distributed among the Department's other Operating and Staff Divisions. SSA's debt consists mostly of overpayments to beneficiaries under its four major entitlement programs -- Old Age Survivors Insurance, Disability Insurance, Black Lung, and Supplemental Security Income. PHS' debt consists mostly of amounts owed its Health Professions and Nursing Student Assistance Programs.

Of the total $3.1 billion debt owed to the Department as of March 31, we estimate that approximately one-third of this amount, or $1 billion, represented delinquent debt.

HHS Debt Collection Program

Secretary Schweiker has placed a high priority on the Department's debt collection program. A very comprehensive program has been established throughout the Department. Each HHS component has a debt collection plan containing specified action steps, accompanied by the dates each action is targeted for completion. Both Secretary Schweiker and I personally monitor progress under these plans to collect debt and improve the Department's debt management.

We completed a number of important actions under these plans. For example, we have under development standard Departmental policies for charging interest and penalties and using commercial collection agencies to collect delinquent debt. PHS has developed an early warning system to identify troubled medical facilities. Through the third quarter of FY 1982, PHS completed 325 on-site assessments at selected institutions to identify schools with fiscal management deficiencies that needed technical assistance. SSA has trained its personnel on how to collect debt and established 40 field collection centers this year. In addition, systems are being enhanced throughout the Department to insure accountability and control over all debt. These systems, once operational, will enable both PHS and SSA to automatically bill, collect, age, and charge interest on all debts.

Finally, the Secretary transmitted on July 12 a draft bill to the Congress which would permit disclosure from tax records of the addresses of individuals who have defaulted on health education loans.

HHS' Procedural Protections for the Debtor

The Department has institutionalized management control over all debt. We take great pains to ensure that all debtors' rights are respected.

With respect to audit disallowances, all auditees have thirty (30) days from the date of the first notice that the debt is due to appeal audit disallowances.

With respect to the Social Security Administration's (SSA) entitlement programs, where most of the Department's outstanding debt occurs, beneficiaries can make a waiver request at any time even if recovery action has begun. In SSA's first notice that a debt is due because of overpayments, the beneficiary is advised that he/she has (1) right for reconsideration on the fact of the amount of overpayment, (2) right to appeal within sixty (60) days, and (3) right to continue to receive payments until the appeal is resolved, provided SSA is contacted in writing within thirty (30) days. Beneficiaries are considered at fault if they (I) knowingly file an incorrect statement, (2) fail to report a material fact affecting eligibility, or (3) accept payment knowing it is incorrect. Under Title II, beneficiaries are considered without fault if (1) an incorrect benefit rate is calculated, (2) they lack insured status, (3) duplicate payments are made without their knowledge, (4) conflicting claims are filed for the same benefit, (5) they

have medically recovered but are not advised they were able to work (6) they are overpaid because of excess earnings in a shortened tax year, etc. Under Title XVI, all circumstances must be considered in determining whether the beneficiary received the overpayment without fault, e.g., mental and physical condition, age, education or ability to understand his/her responsibility, and the types of events that cause change in eligibility.

HHS' Use of Offsets to Collect Debts

SSA is currently collecting many overpayments through offset. Offset is also used to collect amounts owed the Department on other programs when the amounts owed can be offset against amounts due to a grantee or contractor under a current award.

Also, the Omnibus Budget Reconciliation Act of 1981 gave the Health Care Financing Administration authority to immediately recover Medicaid disallowances. States must now pay interest on Medicaid disallowances for the full time they hold money due the Department if it is not immediately returned. The monies, since passage of this legislation, have been quickly recovered through offset against the States' grant awards.

Debt Collection Legislation

The Department's administrative actions alone will not solve all our debt management problems. Restrictive Federal laws that prevent the use of collection tools and techniques, used effectively in the private sector, must

be amended in order to eliminate the impediments that presently exist in the Department's and the Federal Government's debt collection program.

Mr. Chairman, we ask that you and the Committee support legislative remedies that will, among other things, provide clear statutory authority to:

- o Contract for private sector collection services;
- o Refer credit information on delinquent debtors to credit bureaus;
- o Assess interest, penalties and administrative charges on delinquent debts due the Department; and
- o Offset the salaries of Federal employees to satisfy their delinquent debts owed us.

I wish to briefly discuss the importance of the legislative issues which are essential to our overall debt collection effort that are included in H.R. 4614.

Protection of Federal Debt Collectors

Section 2 of the bill makes it a Federal criminal offense to assault a Federal employee collecting debts owed the Government. The Social Security Administration has an extensive collection network. Attempts to collect debts can be a risky undertaking. Government employees have been the subject of verbal abuse, death threats, or threats of bodily harm to themselves and members of

their family. While we have not, to our knowledge, had a specific case of this in HHS, we understand that other Federal agencies have had this problem, and the potential of these problems certainly exists for HHS employees as well.

Clarification to the Statute of Limitations for Administrative Offset

Section 3 of the bill would allow agencies to collect delinquent debts by administrative offset beyond the six-year statute of limitations. The Department only uses the administrative offset in situations where there is a chance of collecting a debt in a cost-effective manner. If a decision is made to offset a debt, the Federal Claims Collection Standards require us to give the debtor prior notification of the intent to offset; an opportunity to request reconsideration of the debt, or if provided for by statute, waiver of the debt; and an explanation of the debtor's rights. An offset will not occur until the differences between the debtor and the agency are resolved. These protections ensure that only valid debts will be offset.

Interest and Penalty on Indebtedness to the United States

Section 4 of the bill would require agencies to charge a minimum annual rate of interest on delinquent debts equal to the average rate for the Treasury tax and loan accounts. This rate is, in effect, a market rate and would allow HHS and other Federal agencies to recover the cost of carrying the debt.

The legislation would also allow agencies to assess charges to cover the additional costs of processing and handling delinquent claims, and a penalty charge not to exceed 6 percent per annum on delinquent debts more than ninety (90) days old. The legislation would also allow agencies to waive interest, penalties and administrative charges in hardship situations. Statutory authority to charge a 6 percent penalty would, we believe, be very effective in speeding up collection of debts owed the Department.

Every dollar that the Department fails to collect must be replaced by additional revenue, offset by budget reductions, or replaced with borrowed funds. The third option is very expensive. This bill would enable us to distribute the cost back to the debtor.

Service of Summons

Section 5 of the bill would permit United States Attorneys to use the mail, State and local law enforcement officials, or private contractors to serve legal documents, including foreclosure actions, in the litigation of debt cases. The proposed legislation would relieve the heavy workload of United States Marshals by enabling United States Attorneys to use the most efficient and cost-effective means of serving process on debt cases. This will, in turn, be beneficial to HHS by facilitating faster processing of the debts we turn over to United States Attorneys for litigation.

Contracting for Collection Services

Section 6 of the bill will allow agencies to contract with private firms for the collection of Government debts. HHS plans to use commercial collection agencies, for example, in recovering defaulted student loans, based on the April 17, 1981 joint ruling of the Comptroller General and the Attorney General. We believe it is also important for the Congress to provide a firm statutory foundation for debt collection activities of this nature and we welcome efforts in that direction contained in this bill.

The legislative changes contained in H.R. 4614 and in complementary bills now pending in the House and Senate, including H.R. 4613, H.R. 2811, H.R. 5471 and S. 1249 are essential to a strengthened debt collection program for the Federal Government. Collecting monies owed is an essential part to achieving the President's budget reduction and economic recovery goals.

Mr. Chairman, this concludes my prepared statement. I will be happy to answer any questions you may have.

Mr. HALL. Thank you, Mr. Sopper.

Regarding the delinquent debts, does HHS presently have the statutory authority to charge interest and penalties and to use commercial collection agencies to collect these debts?

Mr. SOPPER. We believe that we do have authority to use commercial collection agencies to collect delinquent debts. That is one of the areas which is covered in this comprehensive policy which the Secretary has just issued. We feel that we have that authority from the GAO and the Justice Department regulations which were recently issued.

In fact, SSA is beginning a pilot exercise to use collection agencies. I think I will ask Bob Marder to expand a little bit on that.

Mr. MARDER. We are planning on a pilot program right now in two small areas in the country to turn over debt where we have exhausted our administrative efforts in collection to see if private collection will be of a value to the Social Security Administration.

Mr. HALL. Would those private collectors have the right to settle an obligation for less than full value without having to come back and check with headquarters?

Mr. MARDER. No. Authority to waive, terminate or compromise the debt would remain with the agency.

Mr. HALL. What sort of a percentage basis do you have with these collection agencies?

Mr. MARDER. Excuse me, sir?

Mr. HALL. What sort of a percentage for collection do you have with these collection agencies?

Mr. MARDER. We haven't reached the point of negotiation of contracts, but are dealing with the American Collectors Association, which is the trade association. Based on preliminary information, these rates could run anywhere from 40 to 70 percent of the amounts collected.

Mr. HALL. Do you mean the amount that you would pay to the collection agency would be between 40 and 70 percent of what they collect?

Mr. MARDER. That is correct, sir. Some fees for collection agencies are between 40 to 50 percent. With the age of some of our debt, there is a possibility that we could be charged more. But, again, this is debt on which we have exhausted all our administrative efforts.

Mr. SOPPER. Let me say, Mr. Chairman, as Mr. Marder has indicated, this is a pilot effort. We have not gone to this on a full-scale program. This is a pilot that would be undertaken in two areas to get some experience and see what the results would be. So we are not just plunging into this on a nationwide basis; we are trying to do this in a very evenhanded manner and trying it in a couple of areas to see what might be the experience.

Mr. HALL. Any agreement that you have to a debt collector, 70 percent of what he collects seems like it is for the benefit of the debt collector rather than the Federal Government.

Mr. SOPPER. I would agree, Mr. Chairman, 70 percent seems to be a rather large amount.

Mr. HALL. I have never heard of any fee arrangement like that on collections.

Mr. MARDER. Again, we don't have any contracts. This is just word that we are hearing from the American Collectors Association.

Mr. HALL. I am sure they would like that.

Mr. SOPPER. This is something that obviously, Mr. Chairman, as negotiations and conversations move along to set up these pilot projects, we are going to be actively watching and monitoring. I share your concerns about the size of the return to the collection agency.

Mr. HALL. This $900 million that is owing to the Public Health Service, what portion is owed by individuals and what is owed by institutions?

Mr. SOPPER. Let me ask Mr. Markowitz to respond to that.

Mr. MARKOWITZ. I think I have to break that up a little bit differently in response to your question.

Out of that $900 million, about $650 million of that is in student assistance; about $15 million of that is institutional debt, and another $35 million or so is from National Health Service Corps Scholarships.

Mr. HALL. What portion of that is delinquent?

Mr. MARKOWITZ. We have a very difficult time determining the exact amount of institutional debt. A recent survey by the Inspector General's Office in the Department looked at some of the schools and came to the conclusion that about 25 percent of the nursing student loans administered by our schools were delinquent, and about 11 percent of the medical school loans were delinquent. Of the corps scholarships, approximately $5 million is delinquent.

Mr. HALL. What rate of interest does the Social Security Administration and Public Health Service intend to charge on these late debts?

Mr. MARKOWITZ. We would use the policy that has been issued by the Department. We would use the Treasury rates.

Mr. HALL. Is that being done now?

Mr. MARKOWITZ. In most of our programs, it is. In the loan program that we were talking about here earlier, which is administered by the schools, this is a subsidized program and we do not have legal limitations on our authority to charge interest there.

Mr. HALL. What portion of the SSA's overpayment debt arose from individual fault or agency fault? I have heard a lot about computer problems lately on payments to dead people or people—well, the computer was blamed, of course, for everything. What is the breakdown on that?

Mr. SOPPER. Maybe I can give you at least a picture here of the debt in Social Security. We estimate the total debt to be approximately $2.1 billion. Of that amount, $950 million is considered to be delinquent. That breaks out, with respect to the four benefit programs, this way: $141 million is delinquent with respect to old age and survivors insurance; $142 million, disability; $9 million, black lung; $647 million, supplemental security income; and then $11 million with respect to audit disallowances.

In terms of what part of that $950 million is a result of computer problems, Bob, do you want to respond to that?

Mr. MARDER. We don't have any really hard and fast data. But some of the quality sample reviews that have been conducted over

the past year show that beneficiary-caused debt ranges anywhere from 85 percent of our debt in the OASI program to about 65 or 70 percent in the SSI program.

Mr. HALL. In your prepared testimony, Mr. Sopper, I believe you say that delinquent debt in the Department—I am assuming you mean the Department of Health and Human Services—as of March 31, was $1 billion.

Mr. SOPPER. Yes, sir.

Mr. HALL. What efforts are being made to try to collect that money, concerted efforts?

Mr. SOPPER. With respect to the Social Security Administration, they are mounting—in fact, I should say not only with respect to Social Security, but with respect to all of the operating divisions at the Department of Health and Human Services—they have all prepared for fiscal year 1982, and will prepare again for fiscal year 1983, debt collection programs which lay out in detail—and if you would like, we can submit those for the record—lay out in detail the steps that they are going to take to try to collect that debt.

With regard to SSA, they have a very comprehensive program. Again, I am going to ask Mr. Marder to explain to you the steps that they have taken since, as you can see, $950 million of the $1 billion is in Social Security.

The Public Health Service also has a very aggressive program that they are pursuing, and I think it would be good for Mr. Markowitz to lay that out for you.

So, first, I would like to have Mr. Marder explain Social Security's efforts; and then Mr. Markowitz, the PHS efforts.

Mr. HALL. Let me ask one question prior to their answering.

Mr. SOPPER. Yes, sir.

Mr. HALL. Are these ongoing programs you are going to describe to me now, or something that is being considered for the future?

Mr. SOPPER. These are programs that are in place right now.

Mr. HALL. All right.

Mr. MARDER. What we have done in social security for the delinquent debt is prioritize and categorize the debt by its potential for collectability. We have been putting the debt out in releases based on, as I said earlier, the greater potential for collection. So the cases that have gone out in recent months have been those cases where, for example, an SSI beneficiary who is no longer on the rolls is drawing title II OASI benefits and there is obviously potential for collection there.

In addition to that, we have formed somewhat over 40 special debt collection centers which specialize solely in processing of debt. They are not impounded by claims, workloads or interviews or record maintenance or anything like that. Their sole responsibility is debt processing and collection. We contracted with private industry and we have produced a training film on telephone collection techniques which all our staff involved in collection are now using. It teaches people a little more distinctly and clearly how to deal with the interview and how to overcome the most commonly heard objections to repayment of the debt.

In addition, we have tightened our policy and our procedures and we have designed new notices to more clearly emphasize our desire to get the money back. We are right now espousing as aggressively

as we can for people who remain in benefit status with social security the availability of holding their program overpayment from whatever benefit they happen to be receiving.

Mr. HALL. How much has been collected in the past 18 months through the efforts that you have outlined?

Mr. MARDER. In fiscal year 1981, we collected, I believe, $2,642 million. We started our debt collection enhancement activities in the fall of 1981. Thus far for, I think, the first half of this fiscal year, we have collected approximately $1,286 million.

Mr. HALL. Do you anticipate an amount equal or more to that for the next 6 months of the fiscal year?

Mr. MARDER. Yes, sir. It has taken time. It has been a progressive action. As the training has geared up, people have gotten familiarized with their jobs.

Mr. HALL. Has that been done through private collection agencies or through the agency itself?

Mr. MARDER. All our efforts thus far are agency efforts, with the exception of the purchased training film.

Mr. HALL. Do you have any opinion as to whether or not the private collection agencies would be of some benefit to you in the future in collecting this delinquent amount?

Mr. MARDER. We believe there is a potential, depending on the nature of the debt. The debt that we would be turning over to the collection agencies are those people, as I indicated earlier, from whom we have exhausted our collection efforts and who no longer have any program connection with social security. We don't have a heck of a lot of teeth to get at those types of debtors.

Mr. HALL. Will this $600 million of the last 6 months of fiscal year 1981, was that collected merely by offsetting any payments that may have during that period of time been due to some person or persons?

Mr. MARDER. No. We have collected that via refunds, offset against benefits and installment arrangements.

Mr. HALL. On your installment arrangements, do you ever take as security any additional property or any property that a person may have?

Mr. MARDER. No, sir. We don't have the authority to do that.

Mr. HALL. What rate of interest do you charge on your installments?

Mr. MARDER. We currently do not charge interest.

Mr. HALL. Do you have the authority to charge interest?

Mr. MARDER. Based on the GAO-Justice regulations, it appears that we do have, although there is some confusion as to the legality of those regulations. But our General Counsel believes we have the authority.

Mr. HALL. Would it not be a good idea to charge interest on those loans that you are trying to work out on a monthly basis?

Mr. MARDER. We are in the process right now of developing regulations for interest charging on social security debt. And, also, because of the volume of our debts and the complexity of the interest calculation, we said we won't charge interest until we have an automated capability of calculating it and billing for it, which we anticipate in mid-fiscal year 1984.

Mr. HALL. Do you put any instrument of record in a county where a person may live when you have an agreement drawn up on the basis of a promissory note or whatever type of instrument you use? Is that instrument signed and acknowledged by the debtor in such a way that it could be made a part of the deed records or the county records of the county where this person may live?

Mr. MARDER. No, sir.

Mr. HALL. What are the other procedures?

Mr. SOPPER. I would like to have Mr. Markowitz explain what the Public Health Service has been doing.

Mr. MARKOWITZ. Mr. Chairman, I don't have fiscal year 1981 data. In fiscal year 1982, we started off with delinquencies of approximately $115 to $120 million. We are on target in reducing that. We intend to get it down to somewhere in the neighborhood of $25 million before the end of this fiscal year. So far, through the first three quarters of the year, we are meeting that schedule.

This has been done in several ways. One part of our debt was owed to the St. Elizabeths Hospital by the District of Columbia. The administration was prepared to offset the Federal payment to St. Elizabeths and the D.C. Government, facing that situation was able to recover the debt owed to the Public Health Service.

The debt reduction efforts were mainly activities such as increased monitoring and attention to previous debts concerned with the Public Health Service. We are using due diligence procedures and accelerated monitoring, and we are going to be able to resolve most of those debts.

We are also instituting from a systems standpoint for the future an automated tracking system of some of our scholarship programs, because there is a long period of time between the issuance of a scholarship to some of our doctors and nurses until the time that they have to pay it back, as you well know.

Mr. HALL. Is it sometimes longer than 6 years?

Mr. MARKOWITZ. Yes, but it is the length of the educational experience that is important. The debt does not become due to the Federal Government until they complete their education, therefore the statute of limitations period begins when the debt becomes due.

Mr. HALL. Do you use some of the same tactics that we have just heard testimony about prior to your testimony? Is it in-house collections?

Mr. MARKOWITZ. Right now, we are primarily doing in-house collection efforts. We are also engaged in a pilot test of some private collection agencies to collect some of our delinquent scholarships.

Mr. HALL. Has that proved successful?

Mr. MARKOWITZ. We have not started yet, sir. We are now in a competitive bidding process to seek out collection agencies to conduct this experiment. Our projections of collection fees as a percentage of debt owed are a little better than Social Security's because we are dealing with health professionals. We expect that the bidding would come out where the collection agency may only get fees of 25 to 30 percent.

Mr. SOPPER. As I mentioned, Mr. Chairman, we have sent a bill to Congress to allow us to get from tax records through the IRS the addresses of individuals who have defaulted on health education loans. In addition, in May, we sent legislation to the Congress

which would also allow the Public Health Service and the Department to assume responsibility for the collection of debt for the health profession student loan program default cases where the school had exercised due diligence in trying to collect the loans from the individuals and was unable to do so. We are asking the Congress to give us authority so that the school could, in turn, assign that debt over to the Department, and then we would proceed to make attempts to collect it.

Mr. HALL. Have any legal challenges been brought against HHS due to the offset procedures that we have?

I am not aware of any. Dave, are you?

Mr. DUKES. No.

Mr. SOPPER. I am not aware of any, Mr. Chairman.

Mr. HALL. Is there any statute of limitations on HHS efforts to collect debts owed due to overpayments?

Mr. MARDER. Our General Counsel has told us that we can continue our administrative efforts to collect debt beyond the 6-year statute. But there is some uncertainty throughout Government as to which opinion is correct, whether administrative efforts can be maintained after 6 years, or whether they, like civil action, are barred after 6 years.

Mr. HALL. I would certainly recommend that you continue until you are challenged.

Mr. MARDER. We are, sir.

Mr. HALL. Under H.R. 4614, which allows an offset at any time, would Health and Human Services be able to impose an offset as soon as an auditor reported a claim rather than after agency proceedings to determine the validity and amount of the claim?

The reason I asked that question is that there has been some question brought about what is a claim and when is that claim adjudicated to be established. But whenever a claim is said to be that by one of these parties, by your agency, do you offset it at that time or do you wait until that claim has been found to be a valid claim and maybe something you could go to court and establish?

Mr. SOPPER. We wait until we have determined that to be a valid claim. If an auditor conducts an audit and determines there to be some amounts owing the agency, through the audit resolution process, we make a determination about the auditor's findings. At that point, we make a decision as to how much the particular entity owes the Department and would assess the entity a bill for the amount owed.

There are procedures which allow the entity to contest the agency's finding, in that we have a Grant Appeals Board and, moreover, there is also the opportunity to go to court. But once we make a finding, we would start at that point to charge interest if repayment was not forthcoming.

Mr. HALL. Of this $1 billion as of March 31, is this a figure that if we had a hearing here in March of next year, that delinquency would be also around the $1 billion mark? Is that more or less of an ongoing amount that is delinquent at all times?

Mr. SOPPER. I would hope, Mr. Chairman, if we came back next year at the same time, that that $1 billion was considerably reduced. We have spent a lot of time during fiscal year 1982, in es-

sence, really gearing up for much more aggressive debt collection activities.

Mr. HALL. Do you know what the amount of the delinquency was March 31 of last year, 1981?

Mr. SOPPER. Do we have that?

Mr. DUKES. We don't have that with us. We could provide it for the record. I think it was about the same.

Mr. HALL. Have these debt collection activities accelerated during the past 12 months?

Mr. SOPPER. I would say the attention that has been focused in this area has intensified, and the efforts of the agency has intensified. I am very optimistic that we are going to see considerable progress, particularly in the area of student loans, in reducing the amounts delinquent there. And through the efforts of Social Security. I know the Commissioner is very optimistic that the efforts that his staff have undertaken are going to bring down the amount of the delinquency.

Mr. HALL. We thank you gentlemen for your testimony.

Let me see if there is anyone else who may have a question.

Ms. POTTS. Yes, I would like to ask a few questions, generally in the area of due process protections.

Your statement refers to the Federal claims collections standards. Can you explain to us precisely what those are? The statement, I believe, says that these set out the procedures followed in collecting claims.

Mr. DUKES. The Federal claims collections standards set out the general regulations that all Federal Departments and Agencies are to follow. Those standards find their basis in the Federal Claims Collection Act of 1966, as revised.

The Treasury Department has issued its own Federal fiscal requirements manual which provides the basic ground rules for collection matters. Those are the regulations that we basically follow and incorporate in our departmental policies. They are fairly wide ranging, and they are not limited to just interest charging. There are ground rules set out for interest charging, the amount of the rates to be charged for delinquent debt, what you do for installment payments, and those kinds of rules.

Ms. POTTS. Do the Federal claims collection standards provide due process protections for the alleged debtor, such as right to a hearing, confrontation, notice?

Mr. DUKES. They do. I think we also find these in the specific statutes that govern the programs under which the payments were originally made in the first place.

Ms. POTTS. If a generic statute such as H.R. 4614 were passed, where would the procedural protections come from for the debtor, for the person who would be administratively offset?

Mr. DUKES. Again, we would primarily look to the program statutes for those protections.

Ms. POTTS. So that if the program statutes said nothing about allowing administrative offsets, there would be no statutory basis for procedural protections?

Mr. DUKES. I don't think we have looked at that question. Bob, have you looked at that question?

Mr. MARDER. If I understand your question, the social security statutes already provide for waiver and provide the requirements under which waiver will be granted. The social security regulations provide what we will do in terms of notice. For example, our first notice will provide the amount of the debt, the cause of the debt, what we are asking the individual to do about the debt, and what their rights are in terms of waiver, reconsideration, appeal, timeframes in which they must file for those rights, the different types of reviews that are available to them, such as face to face. Additional information for that is already contained in our statutes and regulations and would not be affected by this.

Ms. POTTS. However, you wouldn't know if similar provisions would be in all the other kinds of statutes under which administrative offsets might be applied?

Mr. MARDER. Government-wide, no, I wouldn't.

Ms. POTTS. Assume that under old age survivors insurance, a child receives a payment—the father, mother, whatever has died—the child receives a payment. Under H.R. 746, an offset can be made at any time, and also doesn't require any notice; the statute itself would not require notice. Could you have a situation where, through the life of the child, there was an accrual of interest, penalties and principal. 50 years later, the child decides to retire, applies for social security, and only then finds out that with an administrative offset of a claim he will receive no retirement?

Mr. MARDER. The way we are planning on developing our interesting charging capabilities is that we would cease the accrual of interest when we cease active collection of the debt. So in the example that you cite, the child going off the rolls at some point, no longer a student, no longer disabled, something like that, the current process would be to send upward of three notices and attempt personal contact in order to recover the debt. If those efforts were unsuccessful, we would suspend our collection activities and, at the point we ceased our active collection activities, we would cease the accrual of interest. So the situation of the compounding of the interest becoming greater than the debt could not occur.

Ms. POTTS. But that is under a statute where there are procedural protections and limitations?

Mr. MARDER. Well, that would be under departmentwide proposed guidelines and regulations.

Ms. POTTS. Regarding State and local governments, I assume that HHS has grant programs that are either on a spot basis, one grant to do one thing, or on a continuing basis, perhaps medicaid as a grant program. How would the accrual of interest, the administrative offsets and the other provisions of H.R. 4614 affect the grant programs with the States?

Mr. DUKES. Basically, we find that these programs will be affected principally by any audit disallowances that would be taken against inappropriate program expenditures made by the grantee.

We currently through the audit resolution process come to a determination of whether an amount was misspent, is owed the Department, and we send a bill to the grantee—it could be a State. The grantee has 30 days to appeal that determination. If the bill is not paid within 30 days and the grantee has not appealed, we will then begin to assess interest. We do this under current Treasury

regulations. From that point of view, the bill (H.R. 4614) doesn't help or hinder, it simply perhaps reinforces.

If the grantee appeals, then we suspend collection effort and we suspend any charging of interest during that period until the appeal is resolved. Once the appeal is resolved, if it is resolved in favor of the grantee, we write off the claim that we had made against the grantee. If the appeal is resolved in favor of the Government, we will rebill the grantee, plus interest for the period of appeal—in other words, from 30 days following the date of our original determination. That is the basic procedure we would follow and that is how the grant programs are currently affected and would be affected by the bill.

Ms. POTTS. Let us go back to the capacity to do administrative offsets under H.R. 4614. The bill appears to allow one agency to offset against debts owed to another agency. Under the terms of the bill, for example, would HUD be able to come to HHS and say, "Look, your soical security claimant owes us an FHA mortgage and we are having trouble collecting it. We know that you are paying him social security payments." Would there then be an administrative offset against his social security payments to pay the FHA debt?

Mr. SOPPER. I think, with your permission, Mr. Chairman, we would like to provide an answer for the record to that question after we have had the opportunity to consult with our counsel.

Mr. HALL. Permission granted.

[The information follows:]

We do not believe it is the intent of H.R. 4614 to mandate collection of debt through offset against debts owed other agencies. The Federal Claims Collection Standards, 4 CFR 102.3, promulgated pursuant to Section 3 of the Claims Collection Act, 31 U.S.C. 952(a), state that "appropriate use should be made of the cooperative efforts of other agencies in effecting collections by offset, including utilization of the Army Holdup List, and all agencies are enjoined to cooperate in this endeavor." HHS has been handling requests from other agencies to offset debt on a case-by-case basis.

Ms. POTTS. Thank you, Mr. Chairman.

Mr. Shattuck?

Mr. SHATTUCK. Thank you, Mr. Chairman.

Mr. Marder, you did refer to the practical problem concerning processing the individual claims, particularly as it regards interest. Our bill, H.R. 4614, has a rather extensive provision relating to interest, including a provision for the setting of the amount of that interest, which would be roughly on a yearly basis with a provision for a quarterly determination of modification.

My question is, in terms of your processing the practical problem of dealing with all these different small claims, how would this impact? How would you be able to compute the interest? Would you be required to have the interest recomputed? Would you have to reprocess these things one way or another by reason of the provisions of this bill?

Mr. MARDER. Do you mean because of the changing interest rates?

Mr. SHATTUCK. What interest rate, in other words, and how do you determine the rate, and how do you keep track of the interest?

Mr. MARDER. I would presume, unless someone tells me otherwise, that the rate of interest that we establish at the point of the debt would carry through for the life of the collection of the debt. But it would be possible, for example, to have one person with two overpayments that occurred at different times that would be subject to different interest rates because of the time of identification and notification.

In terms of dealing with it, while I am not a systems person, it appears that it would not be difficult. Computer systems are such that they draw on what they call an outside table. What I would envision is that, as an interest rate changed, the table would be adjusted to, say, for the period beginning such and such a date, the interest is such and such. Then, when the mainstream computer goes in, it just draws from that table. Table modifications, as far as I know, are relatively easy to accommodate.

Mr. SHATTUCK. The bill contemplates what amounts to a commercial rate for interest. To build on Ms. Potts' question, isn't that a rather high rate of interest?

Mr. MARDER. It is a high rate of interest, but it is certainly what the Government is paying in the market to gets its funds. It certainly keeps us on a level with other creditors.

Mr. SHATTUCK. Thank you, Mr. Chairman.

Mr. HALL. Mr. McMahon?

Mr. MCMAHON. One question, Mr. Chairman, in the form of a request. Could you review your enabling statutes or regulations showing that your collection procedures are not summary in nature, that you do accord some minimum due process, for the sake of demonstrating that—for at least keeping the statute constitutional because the attempts to collect debts could be challenged. If your procedures are summary, it would invalidate a good portion of the statutes. If you could just make that available for the record.

Second, in the event that a collection had been challenged and this challenge procedure ended up in court, whether you prevailed or the challenging body prevailed.

Mr. SOPPER. We would be pleased to do that, Mr. Chairman.

Mr. HALL. Thank you very much, Mr. Sopper, and the gentlemen who are with you.

Mr. SOPPER. Thank you.

[The information follows:]

The procedures upon which the Department relies for making collection are contained in the following materials which, as requested, we have provided for the record. These due process standards are, of course, incorporated in greater detail in the implementing procedures related to specific programs of the Department.

Regarding the second part of the question, I trust it refers to challenges, not of the debts themselves, of the procedures used to collect these debts. Although the Department maintains a record of the number and amounts of claims referred to Justice for litigation, we do not centrally maintain statistics on the outcome of this litigation. However, to our knowledge, there have been no challenges to date, let alone any decisions to the contrary, as to the legality of the Department's debt collection procedures.

Rules and Regulations

Federal Register
Vol. 46, No. 74
Friday, April 17, 1981

GENERAL ACCOUNTING OFFICE

DEPARTMENT OF JUSTICE

Attorney General

4 CFR Part 102

Standards for the Administrative Collection of Claims; Contracting for Debt Collection Services

AGENCIES: General Accounting Office—Department of Justice.

ACTION: Final rule.

SUMMARY: This amendment advises Federal agencies to consider contracting with private sources, such as collection agencies, for collection services to supplement Federal collection programs. This action is necessary because of growing losses on uncollectible debts. Use of such contractors where cost effective and otherwise practical, should reduce such losses and reduce the volume of referrals of collection matters to the Department of Justice for litigation.

EFFECTIVE DATE: April 17, 1981.

FOR FURTHER INFORMATION CONTACT: Chris Ferley, Jr., U.S. General Accounting Office, Accounting and Financial Management Division, Claims Group, Room 5860, 441 G Street, NW., Washington, D.C. 20548, (202) 275-8068.

SUPPLEMENTARY INFORMATION: Agencies have been contracting for some services related to debt collection, such as the purchase of debtor income and asset reports, mailing services, and computer services. The scope of such contracts has been limited, however, because several years ago GAO took the position that Federal agencies could not legally delegate to private contractors the agencies' collection authority under the Federal Claims Collection Act. Also, traditionally, the use of private collection agencies was opposed on policy grounds.

The original policy objections focused upon the dubious reputations and methods of collection agencies at that time, as well as their possible lack of expertise or responsiveness in dealing with Federal debtors. The Fair Debt Collection Practices Act (15 U.S.C. 1692), which became effective in 1978, and numerous State statutes and regulations now prohibit abusive, deceptive, and unfair practices by collection agencies. Also, as evidenced by collection contracts awarded by the Department of Education under its specific legislative authority, carefully drawn contractual arrangements can be used to impose appropriate requirements and restrictions on a collection agency.

In view of the fact that many of the original policy concerns have been resolved, the previous legal position that agencies are precluded from contracting with collection firms has been reexamined. We have concluded that agencies must retain ultimate responsibility for, and control over, debt collection activities, including retention of discretion over the compromise of debts or other dispositions short of full recovery.

We have also concluded, however, that contractual delegation of the more routine responsibilities is consistent with general legal concepts governing the authority of Federal agencies to contract for the performance of services. Federal claims collection activities entail numerous routine administrative actions such as locating debtors, arranging for repayment schedules and billing and posting payments, which could be provided by private sources.

Since the Federal agency must retain ultimate responsibility for collection, claims referred to the contractor remain claims of the United States. Therefore, any litigation in connection with such claims will remain a Federal responsibility, generally under the jurisdiction of the Department of Justice. See 28 U.S.C. 516. In addition, the contract should provide a mechanism to insure that any substantive issues relating to the underlying merits of the claim are referred back to the Federal agency for resolution.

The requirement that the Federal agency head retain authority and discretion to determine when claims should be compromised or collection action otherwise terminated could be met by having the contractor return to the Federal agency claims which it recommends for compromise or termination. In addition, the Federal agency head should retain some general authority and oversight over the collection methods employed by the contractor.

At present, when an agency has completed the various collection actions called for by the Federal Claims Collection Standards and its own regulations, a debt that is uncollected must be written off or referred for legal action, depending on the size of the debt and the prospects that legal action will be successful. This amendment provides for a third alternative—continuing collection action through private collection agencies. If, as expected, experience shows such use of collection agencies to be cost effective and otherwise practical, the vast numbers of debts currently written off or referred for legal action will be reduced.

The amendment does not specify that contracts for collection services must be limited to private collection agencies. Agencies may find additional opportunities to effectively supplement and strengthen their collection programs through use of private sector resources, and consideration of such approaches is encouraged, so long as the restrictions stated in the amendment are observed and other regulatory requirements applicable to such contracts, including OMB Circular A-76, are complied with.

Accordingly, 4 CFR Part 102 is amended as follows:

§§ 102.5 through 102.16 Redesignated as §§ 102.6 through 102.17.

1. Sections 102.5, 102.6, 102.7, 102.8, 102.9, 102.10, 102.11, 102.12, 102.13, 102.14, 102.15 and 102.16 are redesignated as 102.6, 102.7, 102.8, 102.9, 102.10, 102.11, 102.12, 102.13, 102.14, 102.15, 102.16 and 102.17 respectively.

2. A new § 102.5 is added, reading as follows:

§ 102.5 Contracting for collection services.

Agencies should consider contracting for collection services. Contracts may be entered into for this purpose when they meet the following conditions: (a) the service must supplement, but not replace, the basic collection program of

the agency; (b) the authority to resolve disputes, compromise claims, terminate collection action, and initiate legal action must be retained by the agency and; (c) the contractor shall be subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, and, when applicable, to Federal and State laws and regulations pertaining to debt collection practices such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692.

3. Redesignate §§ 102.5 through 102.16 in the table of contents to Part 102, as 102.6 through 102.17 respectively.

4. The index to Part 102 is amended by inserting immediately beneath "102.4 Reporting delinquent debts to commercial credit bureaus" a new heading as follows:

§ 102.5 Contracting for collection services. [31 U.S.C. 952(a)]

Dated: April 13, 1981.

William French Smith,

Attorney General of the United States.

Elmer B. Staats,

Comptroller General of the United States.

[FR Doc. 81-11797 Filed 4-16-81; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 0

Employee Responsibilities and Conduct

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adding three references to the list of statutory provisions cited in section 0.735–24 of its Employee Responsibilities and Conduct regulations. The rule adds references to provisions concerning financial disclosure reports, prohibited personnel actions, and misuse of information obtained through employment.

EFFECTIVE DATE: April 17, 1981.

FOR FURTHER INFORMATION CONTACT: Peter Sleight (Office of Personnel), United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, D.C. 20250, (202) 447–7654.

SUPPLEMENTARY INFORMATION: The Department's conduct regulations include a list of statutory provisions, each of which impose certain restrictions on the activities of Federal employees. Although employees are individually responsible for acquainting themselves with statutes that govern their conduct, the Department has determined that it is appropriate to call attention specific provisions and prohibitions. The Department is adding three new citations to this list. The added paragraphs refer employees to statutes dealing with financial disclosure reports, prohibited personnel actions, and using information gained on the job to speculate in commodities.

The Director, Office of Government Ethics, Office of Personnel Management has approved this final rule. Since this rule relates solely to internal agency management, it has been found pursuant to 5 U.S.C. 553 that notice and prior publication for comment is unnecessary, and good cause is found for making this rule effective less than 30 days after publication in the Federal Register. In addition, this regulation has been reviewed under Executive Order 12291, and has been determined to be exempt from those requirements. John W. Fossum, Director of Personnel made this determination because this rule concerns matters related to agency management.

Accordingly, 7 CFR 0.735–24(a) is amended by the addition of new subparagraphs (67), (68), and (69) to read as follows:

§ 0.735–24 Miscellaneous statutory provisions.

(a) * * *

(67) The prohibition against failure to file or the filing of a false financial disclosure report (Sec. 204(a), Pub. L. 95–521; 5 U.S.C. App.);

(68) The prohibitions against prohibited personnel practices (5 U.S.C. 2302);

(69) The prohibition against the use of information obtained in the course of employment to speculate or to aid another in speculating on any commodity exchange (50 U.S.C. App. 2160(f)).

(Executive Order 11222 of May 8, 1965, 30 FR 6469; 5 CFR 735.104)

John R. Block,

Secretary of Agriculture.

April 14, 1981.

[FR Doc. 81-11798 Filed 4-16-81; 8:45 am]

BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

7 CFR Part 354

Overtime Services Relating to Imports and Exports; Commuted Traveltime Allowances

AGENCY: Animal and Plant Health Inspection Service, USDA.

SUMMARY: This document amends administrative instructions prescribing commuted traveltime. These amendments establish commuted traveltime periods as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from the place at which an employee of Plant Protection and Quarantine performs overtime or holiday duty when such travel is performed solely on account of such overtime or holiday duty. Such establishment depends upon facts within the knowledge of the Animal and Plant Health Inspection Service.

EFFECTIVE DATE: April 17, 1981.

FOR FURTHER INFORMATION CONTACT: E. E. Crooks, Regulatory Support Staff, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, U.S. Department of Agriculture, Hyattsville, MD 20782, (301–436–8249).

SUPPLEMENTARY INFORMATION: This final action has been reviewed under Executive Order 12291, and has been determined to be exempt from those requirements. Nicholas E. Bedesem, Special Assistant to the Administrator, made this determination because commuted traveltime allowances are strictly a function of where the APHIS employee lives in relation to the place overtime or holiday duty is performed. As employees are transferred or change their residence or as the place of inspection changes, the number of hours of commuted traveltime allowed may change. These amendments merely reflect such changes and serve to notify the public of the new allowed hours.

It is to the benefit of the public that these instructions be made effective at the earliest practicable date. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the authority conferred upon the Deputy Administrator, Plant Protection and Quarantine, by 7 CFR 354.1 of the regulations concerning overtime services relating to imports and exports, the administrative instructions appearing at 7 CFR 354.2, as amended, January 3, September 26, December 28, 1979; March 21, July 11, October 30, 1980; and January 7, 1981 (44 FR 1364, 55734, 74791; 45 FR 18387, 46755, 67263, and 1661) prescribing the commuted traveltime that shall be included in each period of overtime or holiday duty are further amended by adding (in appropriate alphabetical sequence) and removing the information as shown

Claims Collection Standards

Rules and Regulations

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GENERAL ACCOUNTING OFFICE

DEPARTMENT OF JUSTICE

4 CFR Part 102

Collecting Debts by Offset

AGENCIES: General Accounting Office—Department of Justice.

ACTION: Final rule.

SUMMARY: This rule requires that agencies, in accordance with implementing regulations, extend to debtors an opportunity for a pre-offset oral hearing when a question of indebtedness cannot be resolved by review of documentary evidence and issues of credibility or veracity exist. Recent court decisions have emphasized the need for the Government to provide due process protections to debtors before collecting an alleged debt by offset. Granting an opportunity for a pre-offset oral hearing in appropriate cases conforms with due process requirements and will minimize the risk that the Government will collect invalid debts by involuntary offset.

EFFECTIVE DATE: July 31, 1981.

FOR FURTHER INFORMATION CONTACT: Chris Farley, Jr., U.S. General Accounting Office, Accounting and Financial Management Division, Claims Group, Room 5860, 441 G Street, NW., Washington, D.C. 20548, (202) 275-6068.

SUPPLEMENTARY INFORMATION: On April 28, 1981, the General Accounting Office and the Department of Justice published a proposed rule (46 FR 23939) to amend the present section in the Federal Claims Collection Standards dealing with collecting debts by offset (4 CFR 102.3). As was stated at that time, recent court decisions have emphasized the need for the Government to assure that claimant agencies provide due process protection to debtors prior to initiating offset actions.

In response to a number of comments and inquiries received during the comment period, we have amended the proposed rule.

In the supplementary information describing the proposed rule, we pointed out that for debt collection programs in which issues of credibility or veracity rarely arise, it will not be necessary to sift through all requests for reconsideration and grant a hearing to the few that involve credibility or veracity. We also pointed out that the regulation was not intended to eliminate agency discretion to exempt such collection programs from the requirements of the amendment. This conclusion was based on a Supreme Court decision, *Califano* v. *Yamasaki*, 442 U.S. 682 (1979). In this regard, one commenter pointed out that the proposed rule could be interpreted to require notice under paragraph 102.3(c) even in those instances in which a pre-offset oral hearing is not required because the debt collection systems concerned only rarely involves issues of credibility or veracity. Accordingly, paragraph (c) has been revised so that the notice provisions would not apply to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity.

Another commenter suggested that paragraph (b)(1) be revised to explicitly indicate that an opportunity for an oral hearing is required in waiver cases only where the agency does not accept the factual contentions of the debtor. The commenter pointed out that his agency rarely disputes the debtor's factual allegations, but rather bases a waiver determination on whether the debtor reasonably should have been aware that the payment was erroneous. We agree that waiver cases decided upon such a standard of reasonableness rarely involve issues of credibility or veracity and therefore do not require a pre-offset oral hearing. However, in view of the Government-wide applicability of the regulation, we are hesitant to include in the actual regulation a specific example of [illegible] issue [illegible] rarity [illegible] not [illegible] be [illegible] action [illegible] action and waiver systems and explicitly stated in implementing regulations.

Another commenter was concerned with the circumstances under which oral hearings would be required and with the timing of such hearings. The same commenter also addressed several technical issues such as whether foreign nationals would be covered by the amendment and whether late payment fees or interest charges should be assessed pending an oral hearing. Again these questions can be best addressed by an agency in implementing regulations, and by consulting other pertinent authorities, such as the Treasury Department's Fiscal Requirements Manual with respect to charging interest. The General Accounting Office will provide advice to individual agencies upon request.

This amendment is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981.

Accordingly, 4 CFR 102.3 is revised to read as follows:

§ 102.3 Collection by offset.

(a) Collections by offset will be undertaken administratively in accordance with these standards and implementing regulations established by the head of each agency on claims which are liquidated or certain in amount in every instance in which this is feasible. Collections by offset from persons receiving pay or compensation from the Federal Government shall be effected over a period not greater than the period during which such pay or compensation is to be received. See 5 U.S.C 5514.

(b) When the head of an agency, or his designee, pursuant to 5 U.S.C. 5514, 5522, 5705, 5724(f), or other statutory authority, seeks to collect a debt by offset against accrued pay, compensation, accrued benefits derived from Federal service or amount of retirement credit due to a present or former Government employee, a member of the armed forces, a Reserve of the armed forces, or a present or former employee of the U.S. Postal Service, the agency to which the debt allegedly is owed will accord such debtor an opportunity for a pre-offset oral hearing when (1) the debtor requests waiver of the indebtedness and the waiver determination turns on an issue of credibility or veracity or (2)

where the individual requests reconsideration of the debt and the head of the agency or his designee determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity: *Provided that*, where the employment or active duty status of a debtor entitled to a hearing under paragraph b(1) or (2) of this section terminates, and the creditor agency determines that (i) amounts accruing to the debtor upon such termination are available for offset in satisfaction of the alleged indebtedness, (ii) such amounts would not be available for offset subsequent to termination and (iii) the time prior to termination does not permit a pre-offset hearing, the agency may withhold from amounts accruing to the individual upon termination, a sum not greater than that of the alleged indebtedness and, subsequent to termination, promptly provide an opportunity for an oral hearing to resolve the issue of indebtedness or waiver. Amounts withheld but later determined not owing to the Government shall be promptly refunded.

(c) Except for debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity, or when employment or military status is about to terminate as described in the proviso of paragraph (b) of this section, prior to collecting any indebtedness by offset the head of the agency to which the debt allegedly is owed or his designee shall provide the debtor a written demand containing the notices prescribed in § 102.2 above and include therein: (1) notice of the agency's intention to collect by offset; (2) an opportunity to request reconsideration of the debt, or if provided for by statute, waiver of the debt, and (3) an explanation of the debtor's rights pursuant to this section.

(d) Collection by offset against a judgment obtained by the debtor against the United States shall be accomplished in accordance with the Act of March 3, 1875, 18 Stat. 481, as amended, 31 U.S.C. 227.

(e) Appropriate use should be made of the cooperative efforts of other agencies in effecting collections by offset, including utilization of the Army Holdup List, and all agencies are enjoined to cooperate in this endeavor.

(Sec. 3, 80 Stat. 308; 31 U.S.C. 952)

Dated: July 28, 1981.

William French Smith,

Attorney General of the United States.

Dated: July 27, 1981.

Milton J. Socolar,

Acting Comptroller General of the United States.

[FR Doc. 81-22802 Filed 7-30-81; 8:45 am]

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BILLING CODE 6410-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 316; Lemon Regulation 315, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period August 2–8, 1981, and increases the quantity of lemons that may be shipped during the period July 26–August 1, 1981. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective August 2, 1981, and the amendment is effective for the period July 26–August 1, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980–81. The marketing policy was recommended by the committee following discussion at a public meeting on July 8, 1980. A regulatory impact analysis on the marketing policy is available from William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on July 28, 1981, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is easier, but still considered good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

Information collection requirements (reporting or record keeping) under this part are subject to clearance by the Office of Management and Budget and are in the process of review. These information requirements shall not become effective until such time as clearance by the OMB has been obtained.

1. Section 910.616 is added as follows:

§ 910.616 Lemon Regulation 316.

The quantity of lemons grown in California and Arizona which may be handled during the period August 2, 1981, through August 8, 1981, is established at 273,328 cartons.

2. Section 910.615 Lemon Regulation 315 (46 FR 38068) is revised to read as follows:

§ 910.615 Lemon Regulation 315.

The quantity of lemons grown in California and Arizona which may be handled during the period July 26, 1981, through August 1, 1981, is established at 315,700 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

CHAPTER 4-60

CLAIMS COLLECTION REGULATIONS

4-60-10 REGULATIONS

The following Department regulations (32 FR 241, December 14, 1967, 33 F.R. 17292, November 22, 1968, 36 F.R. 3816, February 27, 1971) implement the Federal Claims Collection Act of 1966.

Title 45 - PUBLIC WELFARE
Subtitle A - Department of Health, Education, and Welfare
General Administration

Part 30 - CLAIMS COLLECTION

Part 30 of Title 45 of the Code of Federal Regulations is added to read as follows:

Sec.
30.1 Incorporation by reference.
30.2 Scope of regulations.
30.3 Delegation of authority.

AUTHORITY: The provisions of this Part 30 issued under sec. 3, Federal Claims Collection Act of 1966, Public Law 89-508, 80 Stat. 309, 31 U.S.C. 951-953; Joint Regulations of GAO and Department of Justice, 4 CFR Ch. II Parts 101-105; Statement of Organization and Delegation of Authority of the Department as amended, 31 F.R. 16375.

§ 30.1 Incorporation by reference.

The regulations of this part incorporate herein and supplement as necessary for Department operation all provisions of the Joint Regulations issued by the Comptroller General of the United States and the Attorney General of the United States under section 3 of the Federal Claims Collection Act of 1966, which prescribes standards for administrative collection of civil claims by the Government as well as compromise, suspension, or termination of agency collection action, with respect to claims not exceeding $20,000 exclusive of interest, and the referral to the General Accounting Office, and to the Department of Justice for litigation, of civil claims by the Government.

§ 30.2 Scope of regulations.

The standards set forth in this chapter are not applicable where standards are prescribed under statutes other than the Federal Claims Collection Act of 1966, for compromise or termination of collection action, or waiver in whole or in part of claims thereunder.

CHAPTER 4-70

CLAIMS COLLECTION PROCEDURES

4-70-00 SCOPE

A. General Authority. These procedures implement the Claims Collection Act of 1966 (31 U.S.C. 951-953) governing claims by the Federal Government, the Joint Regulations of the General Accounting Office, and the Department of Justice (4 CFR Ch. II Parts 101-105), the Department Regulations (45 CFR Subtitle A Part 30, Claims Collection), and are supplemented by the GAO Manual for Guidance to Federal Agencies, Title 4--Claims.

B. Joint Regulations. The Joint Regulations prescribe the standards for administrative collection, compromise, suspension, and termination of agency collection action and, if necessary, referral to the General Accounting Office or the Department of Justice for litigation of civil claims by the Federal Government for money or property.

C. Claims Covered. The standards set forth herein apply to administrative collection of all civil claims of the Department for money or property resulting from its activities, with the following exceptions:

1. Claims in an amount over $20,000, exclusive of interest.

2. Claims resulting from fraud of misrepresentation.

3. Tort claims.

4. Claims covered within the scope of other statutes to the extent they prescribe their own standards, such as claims under the Federal Medical Care Recovery Act as well as claims under Title II and XVIII of the Social Security Act.

The Act does not preclude the utilization of other administrative proceedings required or available by contract provisions such as a dispute clause, or by law.

(4-60-10 continued)

§ 30.3 Delegation of Authority.

(a) The Secretary delegated to the Department Claims Officer the authority to perform the duties vested in him by the Federal Claims Collection Act of 1966 (31 U.S.C. 951-953) as amended, except with respect to erroneous payments under Titles II and XVIII of the Social Security Act.

(b) The Department Claims Officer shall compromise, suspend, or terminate claims referred to him after administrative collection efforts have been exhausted in accordance with the provisions of this part.

(c) The appropriate office, local, regional or headquarters, shall take all necessary administrative action required under the Act and Joint Regulations, except that, with respect to claims of $800 or more, no compromise of a claim shall be effected, nor collection action suspended or terminated without the prior approval of the Department Claims Officer, or the following specific delegatees:

1. The Deputy Assistant General Counsel, Business and Administrative Law Division, Office of General Counsel.

2. The Chief, Litigation and Claims Branch, Business and Administrative Law Division, Office of General Counsel.

3. The Regional Attorneys except with respect to claims arising out of activities of the Public Health Service.

(4-70-00 continued)

Only the Department of Justice has the authority to terminate or compromise claims in any amount involving fraud, false claims or misrepresentation, unless the Department of Justice returns such claim to the agency for handling in accordance with the Joint Regulations because action based on the alleged fraud, false claim, or misrepresentation is not warranted. A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one of $20,000 or less, exclusive of interest, for the purpose of compromise, suspension, or termination of collection action.

4-70-10 CLAIMS COLLECTION OFFICER

The head of the constituent agency in the Department responsible for the program giving rise to the claim shall designate an officer who shall be responsible for the administrative collection of claims, hereinafter referred to as the Claims Collection Officer. He shall take aggressive action, on a timely basis, with effective follow-up, as prescribed herein, to collect all such claims.

4-70-20 COLLECTION EFFORTS

A. Collection efforts to be taken by the Claims Collection Officer:

1. Letters. Three demands, in terms which inform the debtor of the consequences of his failure to cooperate, will normally be made to the debtor at 30-day intervals, unless earlier response indicates that further demand will be unnecessary or unproductive, or that other action, such as suit or attachment, is required. The first and second such demands may be made by regular mail; when the third such demand must be made, it shall be sent by certified mail, return receipt requested. If the return receipt is signed by any person other than the addressee-debtor, a letter shall be sent to the appropriate postmaster, requesting a verification of the debtor's address and any information available on the debtor's whereabouts (forwarding address, moved left no address, deceased). A prompt response should be made to any communication from the debtor.

In the case of claims under $800, a certified letter, return receipt requested, should be mailed to the last known address of the debtor as a minimum, and in the case of claims of over $100, said certified letter should be preceded by at least one demand for payment by regular mail. If the certified letter is undeliverable and no

(4-70-20 continued)

forwarding address is indicated or can be obtained, collection efforts may be terminated in the discretion of the Claims Collection Officer upon his determination that the debtor cannot be located after reasonable efforts.

2. Efforts to Locate Debtor. Diligent effort, commensurate with the amount of the claim, must be made to locate a debtor whose whereabouts are unknown, sufficiently in advance of the bar of the applicable statute of limitations to permit the timely filing of suit if such action is warranted.

   The following sources may be of assistance in locating missing debtors: telephone directories; city directories; postmasters; drivers' license records; automobile title and license records; state and local governmental agencies; district directors of Internal Revenue; other Federal agencies; employers; relatives; friends; credit agency skip locate reports.

3. Offset. Collection on claims which are liquidated or certain in amount will be made by offset when feasible in the case of debtors receiving funds from the Federal Government. Examples are:

   a. Erroneous payments to federal employees (5 U.S.C. 5514; Payroll Manual Chapter 11; 4 CFR 102.5; 45 CFR Subtitle A Part 73 Subpart G).

   b. Debts owed by judgment creditors of the United States shall be reported to the Comptroller General for set-off (31 U.S.C. 227).

   c. Debts owed by grantees and contractors.

   Appropriate use should be made of the cooperative efforts of other agencies in effecting collections by offset, including utilization of Army Holdup Lists.

4. Personal Interview. Personal interview with debtor shall be had, if feasible, considering amount of debt and location of debtor. For example, where a claim is under $800, a personal visit may not be warranted.

5. Suspension. Suspension of uncooperative delinquent debtor's eligibility for participation in agency programs should be given serious consideration.

(4-70-20 continued)

6. Liquidation of Collateral. Where applicable, liquidation of collateral to apply against debt if practicable should be effected if debtor fails to pay his debt within a reasonable time after demand.

7. Collection in Installments. Collection in installments when debtor is financially unable to pay in one lump sum may be arranged. The size and frequency of such installment payments should depend upon the size of the debt and the debtor's ability to pay, and if possible, should not be less than $10 a month and should result in liquidation of the debt in not more than 3 years, except in the most unusual circumstances.

B. Interest. In cases where interest is not required by statute, contract, or regulation, the Claims Collection Officer may forego collection of interest as an inducement to voluntary payment. In such cases demand letters should inform debtor that pre-judgment interest will be collected if suit becomes necessary.

C. Documentation of Administrative Collection Action. A file shall be maintained on each debtor which fully documents how the claim arose, the amount involved, the circumstances of the debtor, and the collection efforts made. The bases for compromise, suspension, or for termination of collection action should also be set out in detail.

4-70-30 STANDARDS FOR COMPROMISE OF CLAIMS (pursuant to 4 CFR 102.9)

A. 1. Claims Collection Officers should take the initiative by inviting offers of compromise prior to terminating collection efforts.

2.a. The compromise of a claim of $800 or more within the scope of this chapter must be approved by the Department Claims Officer, upon the recommendation of the Claims Collection Officer after he has complied with the standards provided in paragraph B of this section.

b. As used in this chapter, reference to Department Claims Officer includes:

(1) Assistant General Counsel, Business and Administrative Law Division;

(2) Deputy Assistant General Counsel, Business and Administrative Law Division;

(4-70-30 continued)

(3) The Chief, Litigation and Claims Branch, Business and Administrative Law Division; and

(4) The Regional Attorneys, except with respect to claims arising out of activities of the Public Health Service.

B. Compromise of a claim may be recommended to the Department Claims Officer:

1. When there is a bona fide dispute as to the facts or the law. (The amount accepted in compromise should fairly reflect the probability of full or partial recovery in the event of litigation based upon the availability of witnesses, evidence supporting the Government's claim and related pragmatic considerations.)

2. When the cost of full collection by enforced collection proceedings, or litigation if necessary, (insofar as could be anticipated) will exceed the difference between the amount accepted in compromise and the full amount of the claim. This criteria carries greater weight when small claims are involved.

3. When the debtor cannot pay the full amount within a reasonable time. In determining the debtor's inability to pay, the following factors, among others, may be considered:

a. Age and health of debtor.

b. Present and potential income.

c. Inheritance prospects.

d. Possibility that assets have been concealed or improperly transferred by the debtor.

e. Availability of assets or income which may be realized upon by enforced collection proceedings. If the Claims Collection Officer's file does not contain reasonably up-to-date credit information as a basis for evaluating a compromise proposal, a statement containing such information may be obtained from the individual debtor, executed under penalty of perjury, showing the debtor's assets and liabilities, income, and expense (Form D/J-35). In the case of a corporate debtor, such information may be obtained from balance sheets and such additional data as may be required.

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(4-7D-3D Continued)

C. Installment payments of a compromised amount are to be discouraged. If they are necessary, an agreement for the reinstatement of the prior indebtedness less sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained together with security as indicated in Section 4-70-20A8 of this chapter in every case in which it is possible.

D. Restrictions

1. Neither a percentage of a debtor's profits nor stock in a debtor corporation will be accepted in a compromise of a claim.

2. Only the Comptroller General or his designee may effect the compromise of a claim that arises out of an exception made by the General Accounting Office in the account of an accountable officer, including a claim against the payee, prior to its referral by that office for litigation.

4-7D-4D STANDARDS FOR SUSPENDING COLLECTION ACTION

Suspension of collection activity temporarily may be effected in the full discretion of the Claims Collection Officer when debtor cannot be located after diligent effort (see 4-7D-20A2) and there is reason to believe that future potential for collection is sufficient to justify periodic review and action, considering the amount involved.

4-7D-5D STANDARDS FOR TERMINATING COLLECTION ACTION

A. Termination of collection action within the scope of this chapter must be approved by the Department Claims Officer, except with respect to claims under $800, upon the recommendation of the Claims Collection Officer after he has complied with the standards provided in paragraph B of this section.

1. Claims under $800. Collection action may be terminated by the Claims Collection Officer after unsuccessful collection efforts on the following types of claims:

a. All claims of less than $500, unless the debtor is receiving a salary or retired pay from the Government.

b. All claims of less than $800 where the debtor is unlocated and reasonable attempts have been made to locate him.

(4-70-5 continued)

c. All claims of less than $800 where the family income of the debtor is less than $7,500 per year and is derived from non-federal sources and there is no indication that the debtor has a high income potential, has inheritance prospects or has assets which may be realized by enforced collection proceedings.

B. Termination of collection activity and closing of the file on claims of $800 or more may be recommended to the Department Claims Officer for his approval in case of:

1. Inability to collect or enforce collection of a substantial amount from the debtor because of lack of any present and future financial prospects, taking into consideration the criteria of Section 4-70-3083 and having due regard for the judicial remedies available to the Government.

2. Cost of collection with exceed the amount recoverable thereby.

3. Claim is determined to be legally without merit.

4. Claim cannot be substantiated by evidence or the necessary witnesses are not available and efforts to induce voluntary payment are unavailing.

5. Debt is barred by the applicable Statute of Limitations (General Statutes 28 U.S.C. 2415, 2416) and there has been no partial payment or written acknowledgement of the debt and no prospect for collection by offset. Action based on contract or quasi-contract must be brought within six years or one year after the conclusion of the required administrative proceedings, whichever is later. Right of action accrues anew in event of partial payment or written acknowledgement. Computation of the six-year period shall in no event commence prior to July 18, 1966 even though the claim accrued prior to that date.

4-70-60 REFERRAL TO GAO

A. Referrals are to be made to the Claims Division, General Accounting Office, Washington, D.C. by the Claims Collection Officer and cleared by the Department Claims Officer under the following circumstances:

1. Where the claim is within the scope of this chapter and is for $800 or more.

2. All collection efforts have been exhausted by the Claims Collection Officer in accordance with the standards provided in these procedures and there is no basis for

(4-70-60 continued)

compromise under 4-70-30, suspension under 4-70-40, nor for closing the case under 4-70-50B.

3. Where the debtor cannot be located after efforts to locate him (described in 4-70-20A2) have been exhausted and the statute of limitations has not run.

4. The debtor refuses to pay and there is present ability to pay and no basis for compromise or termination.

B. Referral should be accompanied by a copy of the agency's file on the debtor(s) containing:

1. Current address(es) of debtor(s) or his(their) agent(s) or alternatively a showing that sufficient effort was made to locate missing parties together with a list of prior known addresses.

2. Identifying number of debtor(s) such as Social Security number and date of birth of an individual.

3. A brief statement of the facts, computations, laws, and regulations on the basis of which the debt was administratively determined; copies of available correspondence material to the claim such as an admission of liability by the debtor(s); the questions raised and copies of documents necessary to establish the Government's position.

4. A check list or brief summary of the actions previously taken to collect or compromise the claim, with explanations of omissions, if any, should accompany the claim, showing that:

a. appropriate demands were made on the debtor(s).

b. reasonable efforts were made to effect collection by offset or by allotment.

c. a personal interview was had with the debtor(s) in an attempt to collect (or compromise) the claim or that an omission of an interview was justified.

d. sufficient effort was made to effect compromise.

5. a. Reasonably up-to-date credit information, if available, such as:

(1) a commercial credit report, or

(2) an agency investigative report showing the debtor

(4-70-60 continued)

assets and liabilities and his income and expenses, or

(3) the debtor's own financial statement executed under penalty of perjury reflecting his assets and liabilities and his income and expenses, or

(4) an audited balance sheet of a corporate debtor.

b. Credit data may be omitted if:

(1) a surety bond is available or debtor's liability is covered by insurance in an amount sufficient to satisfy the claim in full, or

(2) the forced sale value of the security available to apply on the claim is sufficient to satisfy the claim in full, or

(3) the debtor is in bankruptcy or receivership.

C. Referrals to the Department of Justice shall be made promptly and prior to administrative collection effort on cases of suspected fraud.

4-70-70 REPORTS

A. Semi-annual reports should be made to the Department Claims Officer containing the following information to the extent practicable:

1. Number of debt claims handled during the fiscal year and the dollar amount.

2. Number of new cases and dollar amount.

3. Number of cases closed and dollar amount by:

a. Collection in full

b. Compromise

c. Closed and unpaid

d. Referral to GAO

e. Number of cases referred to Department of Justice

Mr. HALL. Our next and last witness will be Mr. Bill Stafford. Mr. Stafford, thank you for your patience. We appreciate you being here, and you may proceed as you desire.

TESTIMONY OF WILLIAM STAFFORD, CITY OF SEATTLE, DIRECTOR OF INTERGOVERNMENTAL RELATIONS, ON BEHALF OF THE NATIONAL LEAGUE OF CITIES AND THE U.S. CONFERENCE OF MAYORS; ACCOMPANIED BY JOHN SHIREY, LEGISLATIVE COUNSEL, NATIONAL LEAGUE OF CITIES

Mr. STAFFORD. Thank you. I would like to introduce Mr. John Shirey, Legislative Counsel with the National League of Cities, and also to state that this testimony is not just for the National League of Cities, but also for the U.S. Conference of Mayors.

My name is William Stafford, and I am Assistant to the Mayor and Director of Intergovernmental Relations for the city of Seattle, Washington. I would like to thank you for giving us this opportunity to testify, and also to thank your staff for bringing this legislation to our attention and for realizing the impacts it may have on State and local government.

In listening today to other witness before me, it seems there may be some drafting errors in this legislation which, if not corrected, could have inadvertent impacts on State and local governments. In reading both the Senate report language as to what was meant by section 3 of this bill, and in reading the formal testimony given today which clarifies the statute of limitations for administrative offsets on page 6, it seemed these errors were not intended. When we initially saw this language in this bill, we asked ourselves what is the problem which the administration is trying to solve in terms of State and local government, what is the intent of the language, and what would the impact be on State and local government?

We would like to say that this bill is, in general, legislation which we support. We feel the need to establish credibility in the management of public programs.

It is worth noting that there are $33 billion in delinquent or defaulted debt reportedly owed the Federal Government. This far exceeds the total Federal assistance to cities in any one year, and is nearly as large as the $39 billion Congress cut from the budget last year. Most of this debt is not owed by State and local governments, but by individuals. The quesiton is, how much? Is there really a major problem with State and local governments?

Our concern with H.R. 4614 centers on section 3 of the bill which would amend the U.S. Code to permit an officer or agency of the Federal Government to collect any claim of money against an individual by means of an administrative offset at any time. H.R. 4614 includes no definition that would make the meaning of these terms precise. But we understand that the administration, the proposer of this bill, intends the meaning of the terms to be quite broad and general, as was stated by the Office of Management and Budget testimony on this bill.

For example, an "individual" would include State or local government. A claim would not necessarily be the result of a formal administrative or judicial proceeding. We also understand that this

section could be applied to grants made to State and local governments.

It may well be prudent to use administrative offsets as one way of collecting money rightfully belonging to the Federal Government, but when the authority to do so is so loosely structured as to afford no protections for the accused party, then we must raise objection. If an administrative offset can be used at any time, regardless of exhaustion of administrative or judicial remedies, it would amount to no less than denial of due process.

In prior testimony, the words "delinquent debt" were used, which is a far more acceptable term than the word "claim." In the Federal grant system, as was described in the prior testimony, a claim could be lodged, say, against the city of Seattle for the management of a particular grant program, or against some subcontractor of the city for Federal money, such as the manpower program.

Once a claim is filed, if an offset could start immediately—and the way we interpret the wording, that could be the case—it would be before we had had our chance to go through the grant appeals process which is usually established in the individual law governing that particular Federal program. One of the problems is each Federal program may have a different appeals process. Certain Federal programs use administrative law judges, and others like HHS use an appeal process in which tribunal type processes are put together.

If, in fact, the law states that an offset could be used immediately upon the claim, not at the time that the city of Seattle has judged to be wrong, then the claim process itself could be used as a means of forcing a settlement prior to our being able to use an appeals process.

I think I will make one other point in response to an issue which was raised this morning. That is something which we don't have necessarily the answer to today, which is the question of the statute of limitations on audits, recordkeeping and going beyond 6 years for collection claims. I believe there is going to be testimony tomorrow from somebody who has prepared an inventory of the various Federal programs and the various appeals processes that are available for grants.

We are familiar with a case where a grant was audited. This was a grant made jointly to the National League of Cities and the U.S. Conference of Mayors, which was audited three times and nothing was found. Then, a couple of years later, the grant was audited a fourth time and, at that time, some of the records had been disposed of, which probably should not have been done. But the administrators felt that since earlier audits were successful, certain records could be disposed of. The fourth audit then, therefore, put a claim against the organizations because of lack of records. This claim went through an appeals process at the conclusion of which it was decided that the claim should be reduced to a small amount for items pertaining to certain records that couldn't be reconstructed.

Some of these claims can get quite complicated. If, in fact, you have a claim pending and interest accruing before you have been found delinquent or before you have even exercised your right of

appeal, that would potentially put undue pressure on governments to settle.

I think I will end there. The rest of our testimony covers additional points.

[The statement of Mr. Stafford follows:]

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STATEMENT OF

WILLIAM STAFFORD

DIRECTOR OF INTERGOVERNMENTAL RELATIONS

SEATTLE, WASHINGTON

ON BEHALF OF

THE NATIONAL LEAGUE OF CITIES

ON

H.R. 4614

THE DEBT COLLECTION ACT OF 1982

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

JULY 14, 1982

Summary of Testimony

While generally supportive of efforts to improve federal debt collection practices, the National League of Cities objects to Section 3 of H.R. 4614 relating to use of administrative offsets for the following reasons:

1. Administrative offset could be used before administrative or judicial remedies were exhausted thereby denying due process.

2. The term "claim" lacks sufficient definition, which could allow claims to be made arbitrarily.

3. Use of administrative offsets could lead to cut off of funds unfairly and disruption of program activities.

4. Right to use administrative offsets could be abused by federal agencies.

NLC recommends that amendments be made as follows:

1. Section 3 should be amended to prohibit use of administrative offsets until disputes have been formally resolved.

2. The term "claim" should be defined to mean an action arising out of an administrative or judicial proceeding.

3. The statute of limitations should be retained.

4. Section 4 should be amended to clarify at what time interest or penalties can be changed.

STATEMENT OF
WILLIAM STAFFORD OF SEATTLE, WASHINGTON
FOR THE
NATIONAL LEAGUE OF CITIES
JULY 14, 1982

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM WILLIAM STAFFORD, DIRECTOR OF INTERGOVERNMENTAL RELATIONS IN SEATTLE, WASHINGTON. I AM APPEARING TODAY ON BEHALF OF THE NATIONAL LEAGUE OF CITIES, WHICH REPRESENTS NEARLY 15,000 CITIES OF ALL SIZES THROUGH DIRECT MEMBERSHIP AND MEMBERSHIP IN 49 AFFILIATED STATE MUNICIPAL LEAGUES. IN MY CAPACITY WITH THE CITY OF SEATTLE, I HAVE NUMEROUS DEALINGS WITH FEDERAL AGENCIES IN RELATION TO A VARIETY OF GRANT-IN-AID PROGRAMS WHICH CURRENTLY TOTAL ABOUT $50 MILLION ANNUALLY. IN ADDITION, MY CITY IS A PARTICIPANT IN REGIONAL AGENCIES THAT RECEIVE LARGE GRANTS OF FEDERAL FUNDS.

WE APPRECIATE THIS OPPORTUNITY TO TESTIFY ON H.R. 4614, THE DEBT COLLECTION ACT OF 1982, A BILL THAT ON ITS FACE WOULD NOT APPEAR TO HAVE APPLICABILITY TO STATE AND LOCAL GOVERNMENTS. HOWEVER, IF VARIOUS TERMS IN THE BILL ARE GIVEN BROAD DEFINITIONS, IT COULD SERIOUSLY AFFECT TRANSACTIONS BETWEEN THE FEDERAL GOVERNMENT AND STATE AND LOCAL GOVERNMENTS THROUGH GRANT AND LOAN PROGRAMS.

BEFORE DISCUSSING THE SPECIFICS OF THIS BILL, LET ME SAY THAT WE GENERALLY SUPPORT THIS TYPE OF LEGISLATION AND ANY EFFORTS TO IMPROVE THE DEBT COLLECTION PRACTICES OF THE

FEDERAL GOVERNMENT. AFTERALL, IF MORE REVENUES FOR THE TREASURY CAN BE FOUND, IT WILL LESSEN THE PRESSURE TO CUT AID TO STATE AND LOCAL GOVERNMENTS, AS HAS BEEN DONE THE LAST TWO YEARS IN ORDER TO REDUCE FEDERAL BUDGET DEFICITS.

IT IS WORTH NOTING THAT THE $33 BILLION IN DELINQUENT OR DEFAULTED DEBT REPORTEDLY OWED TO THE FEDERAL GOVERNMENT FAR EXCEEDS TOTAL FEDERAL ASSISTANCE TO CITIES IN ANY ONE YEAR AND IS NEARLY AS LARGE AS THE $39 BILLION THE CONGRESS CUT FROM THE BUDGET LAST YEAR, A THIRD OF WHICH WAS IN AID TO STATES AND LOCAL GOVERNMENTS. THIS UNCOLLECTED DEBT IS ENOUGH TO MAKE US WONDER IF A PROVISION COULD BE ADDED TO H.R. 4614 REQUIRING THAT FUNDS COLLECTED BY THE ACT BE USED TO RESTORE CUTS IN STATE AND LOCAL AID!

OUR CONCERNS WITH H.R. 4614 CENTER ON SECTION 3 OF THE BILL, WHICH WOULD AMEND THE UNITED STATES CODE TO PERMIT AN OFFICER OR AGENCY OF THE FEDERAL GOVERNMENT TO COLLECT "ANY CLAIM" OF MONEY AGAINST AN "INDIVIDUAL" BY MEANS OF AN "ADMINISTRATIVE OFFSET AT ANY TIME." H.R. 4614 INCLUDES NO DEFINITIONS THAT WOULD MAKE THE MEANING OF THESE TERMS PRECISE, BUT WE UNDERSTAND THAT THE ADMINISTRATION--THE PROPOSER OF THIS BILL--INTENDS THE MEANINGS TO BE QUITE BROAD AND GENERAL. FOR EXAMPLES, AN "INDIVIDUAL" WOULD INCLUDE A STATE OR LOCAL GOVERNMENT; A "CLAIM" WOULD NOT NECESSARILY BE THE RESULT OF A FORMAL ADMINISTRATIVE OR JUDICIAL PROCEEDING. WE ALSO UNDERSTAND THAT THIS SECTION COULD BE APPLIED TO GRANTS MADE TO CITIES OR OTHER GOVERNMENTS.

IT MAY WELL BE PRUDENT TO USE ADMINISTRATIVE OFFSETS AS ONE WAY OF COLLECTING MONEY RIGHTFULLY BELONGING TO THE FEDERAL GOVERNMENT, BUT WHEN THE AUTHORITY TO DO SO IS SO LOOSELY STRUCTURED AS TO AFFORD NO PROTECTIONS FOR THE ACCUSED PARTY, THEN WE MUST RAISE OBJECTION. IF AN ADMINISTRATIVE OFFSET CAN BE USED "AT ANY TIME," REGARDLESS OF EXHAUSTION OF ADMINISTRATIVE OR JUDICIAL REMEDIES, IT WOULD AMOUNT TO NO LESS THAN DENIAL OF DUE PROCESS. TO USE ANOTHER EXAMPLE, IF A "CLAIM" IS NOTHING MORE THAN AN AGENCY'S ASSERTION THAT IT IS OWED MONEY, THEN THE USE OF AN ADMINISTRATIVE OFFSET EQUATES TO BEING FOUND GUILTY UNTIL PROVEN INNOCENT.

IN THE CASE OF A GRANT RECIPIENT, SUCH AS A CITY GOVERNMENT, THERE ARE PRESENTLY PRESCRIBED PROCEDURES TO BE FOLLOWED WHEN A FEDERAL AGENCY DISPUTES AN EXPENDITURE OF FUNDS. WITHOUT GOING INTO DETAIL ON THESE PROCEDURES, SUFFICE IT TO SAY THAT IS IS AN ORDERLY PROCESS THAT GIVES BOTH SIDES IN THE DISPUTE A CHANCE TO MAKE THEIR CASES. IF THE GRANT OFFICER MAKES A FINDING AGAINST THE GRANTEE, THE MATTER CAN BE APPEALED TO AN ADMINISTRATIVE LAW JUDGE. IN SOME CASES, A JUDICIAL APPEALS PROCESS COULD BE INVOLVED, TOO.

IF H.R. 4614 IN ITS CURRENT FORM WERE TO BECOME LAW, APPARENTLY THE FEDERAL AGENCY WOULD HAVE THE POWER TO COLLECT THE DEBT BY MEANS OF AN OFFSET "AT ANY TIME" DURING THE NORMAL HEARING AND APPEALS PROCESS. THIS WOULD GREATLY TILT THE PROCESS IN FAVOR OF THE FEDERAL GOVERNMENT AT THE EXPENSE (BOTH LITERALLY AND FIGURATIVELY) OF THE GRANTEE.

THERE ARE PRACTICAL CONSIDERATIONS AS WELL AS ISSUES OF JUSTICE AND FAIRNESS IN THIS MATTER. FOR EXAMPLE, MOST DISPUTES OVER THE EXPENDITURE OF FEDERAL GRANT FUNDS ARE SETTLED FOR AN AMOUNT MUCH LESS THAN THE ORIGINAL CLAIM MADE BY THE AGENCY. APPLYING H.R. 4614 TO THESE CASES MEANS THAT THE AGENCY COULD WITHHOLD THE AMOUNT OF THE ORIGINAL CLAIM ONLY TO HAVE TO LATER PAY MUCH OF THAT AMOUNT TO THE GRANTEE. IN THE MEANTIME, THE GRANTEE HAS NOT HAD THE USE OF THE WITHHELD FUNDS AND THE PROGRAMS HAVE BEEN DISRUPTED. DISRUPTIONS IN GRANT PROGRAMS MEAN EVERYTHING FROM DEFERRAL OF CAPITAL PROJECTS LEADING TO HIGHER COSTS DUE TO INFLATION TO LAYING OFF PEOPLE IN A JOB TRAINING PROGRAM.

THIS SECTION ALSO REMOVES THE STATUTE OF LIMITATIONS ON CLAIMS. IT WOULD BE POSSIBLE, THEREFORE, FOR THE FEDERAL GOVERNMENT TO MAKE A CLAIM ON A CITY MANY YEARS AFTER THE ALLEGED MISUSE OF FUNDS OCCURRED. THIS KIND OF NEVER-ENDING EXPOSURE TO POSSIBLE LIABILITY WOULD BE INTOLERABLE.

UNDER CURRENT PROCEDURES, OTHER OPTIONS ARE AVAILABLE FOR THE REPAYMENT OF A DEBT BESIDES PAYING CASH. THERE ARE INSTANCES, FOR EXAMPLE, WHEN REPAYMENT HAS BEEN ARRANGED BY PROVIDING ADDITIONAL GRANT SERVICES AT NO COST TO THE FEDERAL GOVERNMENT. WE THINK THAT ALLOWING THE PROPOSED USE OF THE ADMINISTRATIVE OFFSET PROCEDURE "AT ANY TIME" WOULD PROVIDE SUCH A SEDUCTIVELY SIMPLE MEANS OF CLAIM COLLECTION THAT IT IS PROBABLE THAT ALTERNATIVE MEANS OF REPAYMENT MAY NOT EVEN BE CONSIDERED. ADMINISTRATIVE OFFSET WOULD MOVE FROM A LAST RESORT METHOD OF COLLECTION--AS IT IS CONSIDERED NOW--TO THE PREFERRED METHOD BECAUSE OF ITS EXPEDIENCY.

FINALLY, THE WAY THE PROVISION IS WRITTEN IN H.R. 4614, THIS NEW AUTHORITY COULD BE ABUSED. IN THE WORST CASE, "CLAIMS" AGAINST GRANTEES COULD BECOME FRIVILOUS OR PURPOSELY INFLATED. IN SUCH CASES, THE GRANTEES WOULD HAVE NO CHOICE IN THE MATTER BUT TO FOREGO ANTICIPATED FUNDS FIRST AND FIGHT THE ACTION THROUGH AVAILABLE CHANNELS LATER.

ALTHOUGH WE HAVE BEEN CRITICAL OF THIS PROPOSAL, WE ARE NOT PREPARED TO EXPRESS COMPLETE OPPOSITION TO SECTION 3. AS WE SAID AT THE OUTSET, THE GOVERNMENT DOES NEED TO IMPROVE ITS DEBT COLLECTION PRACTICES, AND THE ADMINISTRATIVE OFFSET DEVICE, IF PROPERLY HANDLED, CAN BE AN EFFICIENT, EFFECTIVE TOOL FOR DOING THAT.

WE INSTEAD RECOMMEND THAT THE COMMITTEE AMEND SECTION 3 TO INCLUDE SAFEGUARDS THAT WILL PROTECT AN INDIVIDUAL'S OR AN ENTITY'S RIGHT TO DUE PROCESS. AT A MINIMUM THE SECTION SHOULD PROHIBIT THE USE OF AN ADMINISTRATIVE OFFSET UNTIL DIFFERENCES BETWEEN AN AGENCY AND THE OTHER PARTIES TO THE DISPUTE HAVE BEEN FORMALLY RESOLVED. THE TERM "CLAIM" SHOULD BE DEFINED IN THE BILL, PREFERRABLY TO MEAN THE RESULT OF AN ACTION ARISING OUT OF EXHAUSTION OF ADMINISTRATIVE OR JUDICIAL REMEDIES. THE STATUTE OF LIMITATIONS SHOULD ALSO BE RETAINED.

IN ADDITION, WE RECOMMEND THAT SECTION 4 OF THE BILL, RELATING TO INTEREST ON INDEBTEDNESS, BE CLARIFIED TO ASSURE THAT NO PENALTY OR INTEREST CAN BE CHARGED UNTIL A CLAIM IS FINALLY DETERMINED TO BE A DEBT OWED TO THE FEDERAL GOVERNMENT AND NOT RETROACTIVELY TO THE DATE A CLAIM IS ALLEGED.

Mr. HALL. Mr. Stafford, using that last illustration that you used on the fourth audit, what would you recommend or what would you suggest that would solve that problem?

Mr. STAFFORD. In terms of the use of administrative offsets, the National League of Cities and the U.S. Conference of Mayors feel that if a claim against a city or a State has gone through an appeals process and the administrative law judge determines that a program has not been properly managed and, therefore, money is owed to the Federal Treasury, some type of administrative offset could be appropriate. We would not object to that, but a problem remains in the bill with the use of the word "claim," when it appears that "delinquent debt" is intended.

Mr. HALL. I was going to say that the bottom line of your testimony is with reference to section 3.

Mr. STAFFORD. That is correct. We have problems with the language, "an officer or agency thereof from collecting by means of administrative offset at any time, any claim of the United States or an officer or agency thereof from money payable to or held on behalf of an individual." We understand from prior testimony that "individual" is intended to mean State and local government, also.

Mr. HALL. You don't think that the words "at any time" is the main thing that you object to there because it might allow an unjust offset before that claim has really been adjudicated to be a legitimate claim?

Mr. STAFFORD. That is correct. In addition the term "claim" is not defined. During the prior testimony, the administration representatives kept using the words "delinquent debt." If the words "at any time" were eliminated, and, in place of "claim" the words "delinquent debt" substituted and new wording added specifying that the administrative and judicial appeals processes had been eliminated, then an administrative offset could be used in those cases when a local or State government won't pay.

Mr. HALL. During the period of time until that claim had been adjudicated by an administrative law judge or judicial proceedings to be a liquidated demand, using that in the broad sense of having been established as a liquidated claim—there would be no offset proceedings of any kind allowed against that particular entity.

Mr. STAFFORD. I would think that would be appropriate. An administrative offset could be used after a grantee has had its day in court, so to speak, and loses its appeal. In a case in Seattle we had a claim against us on a summer youth program, a program we administer by subcontracting with a community agency. It is frequently the case that audit problems occur not with the city directly but with the subcontractors. The city has auditors running around trying to assure that those subcontractors keep good records.

We had a case a number of years ago in which a summer program operated by part-time people, did not have good records kept for it; we could not justify the expenditure of funds even though we felt the services had been delivered. It was deemed to be our fault for not properly supervising that group. We, in fact, went through a review process at HEW. We lost and had to settle. We had to go to the city council, which was not a pleasant experience, and get $100,000 to reimburse the Federal Treasury.

Mr. HALL. I want to thank you, Mr. Stafford, for your testimony. Are there any questions?

Ms. POTTS. Just one, Mr. Chairman.

Do you have any trouble with the removal—you have talked about "at any time" as a problem in the initiation of the administrative offset, being too early. Do you have trouble with administrative offset being imposed upon you maybe 10, 15, 20, 30 years later when you might have destroyed records? The example you gave of the grant situation where some records had been destroyed after three successful audits, there are two statutes of limitations or timing problems here. One is how early you can do the offset; the other is how late. Do you have a problem with how late it can be done as well as how early?

Mr. STAFFORD. Yes, we do. The issue raised—which I don't have all the facts on today, but on which we will try to provide more information to the committee—is how long should the Federal Government be able to audit a program after it has ended. Related to this is how long must records be kept. If certain Federal programs don't have any statute of limitations on the issues, then it is possible that an audit can be done 7 or 8 years later. The people have retired or left, some of the records are no longer there and, therefore, the grantee can't prove the service was delivered. If a claim is made, the grantee could lose money simply because it had not kept records for a lengthy period. I think that whole area is worth some examination.

Ms. POTTS. Thank you.

Mr. SHATTUCK. On the point of limitations, your statement does state that you wish to retain the statute of limitations, the limitations in the relevant section which would be amended by this bill.

Mr. STAFFORD. Yes, sir.

Mr. SHATTUCK. That is now 6 years.

Mr. STAFFORD. That is correct.

Mr. SHATTUCK. Therefore, in the context—and I believe you are going to supply us with the information—would you comment on the application of the current statute and the point you are making on offset.

[The information follows:]

With respect to all Federal grant programs that provide assistance to state and local governments, the National League of Cities and the U.S. Conference of Mayors would like to see it made clear how long records must be kept by a grantee for a program after it no longer is receiving funding. A reasonable period of time is five years, but whatever period is established, it should serve as the maximum period beyond which audits that result in claims against the grantee can not be conducted. The point here is that a grantee should not be forever liable for possible federal audit exceptions or expenditure disallowances.

If it is determined after exhaustion of administrative and judicial appeals processes, that a grantee owes a sum of money to the Federal Government and then refuses to repay these funds, we would support the proposition that the Federal Government should have an unlimited period of time to pursue payment of what if rightfully owed to it.

Mr. SHIREY. If I could follow up.

Mr. HALL. Yes, you may certainly do that.

Mr. SHIREY. There seems to be a difference of opinion as to what the statute of limitations applies to. It seems that, on the one hand, the administration is contending that it wants to be able to pursue

a payment of a delinquent debt. They don't say delinquent debt—they say "claim"—but they seem to mean delinquent debt. They want to be able to pursue that after 6 years.

On the other hand, we are talking about a statute of limitations which limits how long the Federal Government can continue to audit a program after it has been completed or the alleged infraction took place.

There may be misunderstanding as to which action is being focused on as the problem and to which the statute of limitations may need to be amended.

Mr. STAFFORD. If we have a delinquent debt going beyond 6 years, we have no problem with the use of the word "claim" as it is used here. Again, the term is not defined.

Mr. HALL. Thank you again.

The next meeting of this subcommittee will be a continuation of this hearing tomorrow on H.R. 4614 in room 2226, Rayburn House Office Building, beginning at 9:30. I thank all of you.

[Whereupon, at 11:33 a.m., the subcommittee was adjourned, to reconvene at 9:30 a.m. in room 2226, Rayburn House Office Building, Thursday, July 15, 1982.]

DEBT COLLECTION ACT OF 1981

THURSDAY, JULY 15, 1982

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS OF THE COMMITTEE ON THE JUDICIARY,

Washington, D.C.

The subcommittee met, pursuant to call, at 9:35 a.m., in room 2226, Rayburn House Office Building, Hon. Sam B. Hall, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Hall, Synar, Kindness, and McClory.

Staff present: William P. Shattuck, counsel; Janet S. Potts, assistant counsel; James B. McMahon, associate counsel; and Florence McGrady, legal assistant.

Mr. HALL. The Subcommittee on Administrative Law and Governmental Relations will come to order.

Today we continue our discussion of the debt collection, H.R. 4614, to increase the efficiency of Government-wide efforts to collect debts owed to the United States, and to provide additional procedure for the collection of debts owed to the United States.

Today, we have five witnesses. We will begin the list of witnesses with Eileen Sweeney, attorney for the National Senior Citizens Law Center. If you would come forward and make your presentation, please.

TESTIMONY OF EILEEN SWEENEY, ATTORNEY, SENIOR CITIZENS LAW CENTER

Ms. SWEENEY. Good morning, sir. I am Eileen Sweeney, a staff attorney for the National Senior Citizens Law Center.

I am testifying today at the invitation of the subcommittee, and am most appreciative of this opportunity to express our concerns regarding H.R. 4614.

My responsibilities at NSCLC include working with legal services and aging advocates on the social security and supplementary security income problems of their clients. In recent months, NSCLC has received numerous requests for assistance from advocates whose clients are the victims of the Social Security Administration's creative and often illegal debt collection practices.

My purpose today is to present to you some of the serious consequences to the poor, the elderly, and the disabled who may be the victims of H.R. 4614.

While there is a definite need for the Federal Government to improve its overall success in collection, it does not follow that such procedures should apply against poor, elderly or disabled individuals.

Recent actions of the Social Security Administration provide a frightening view of the atrocious behavior likely to follow enactment of H.R. 4614 in its current form.

For example, in January 1982, SSA issued a notice of a proposed routine use pursuant to the Privacy Act. According to the proposal, SSA could release virtually any information in a beneficiary's file to a private debt collector for use in collection of an SSA overpayment.

Private collection agencies would have access to the most intimate facts about some of the most vulnerable individuals in our society. It is not difficult to imagine an abusive collection agency using a person's mental impairment against him in order to coerce payments.

After substantial congressional and public outcry regarding both the timing and contents of the notice, SSA informally indicated its intention to withdraw the proposed use. However, more recently, it has indicated it will use debt collection agencies on an experimental basis.

Meanwhile, SSA's own staff is making even the more abusive collection agencies look like lambs. First, SSA has sent letters to elderly beneficiaries which threaten the prospect of many of the penalties included in H.R. 4614, such as penalty charges and interest if the person does not pay immediately.

Second, in other cases, despite the fact that SSA does not have the statutory authority to recoup overpayments in the SSI program from OASDI benefits, and despite the fact that HHS has requested Congress to provide such authority, SSA has sent notices to OASDI recipients, telling them that they were overpaid when they received SSI and, for your convenience, SSI will be happy to withhold the full amount of the person's OASDI check until the amount is repaid.

SSA never mentions that it cannot require such recoupment, nor does it inform the recipient of his statutory right to seek waiver.

Third, if the person who received that notice does not reply, SSA then sends a letter threatening to terminate the person's OASDI benefits if he does not respond. It is reasonable to assume that SSA knows it does not have the statutory authority to carry out that threat.

It is simply assuming that elderly and disabled people, relying in whole or in large part on OASDI to survive, will not take the risk that SSA will act upon its threat. And therefore, the person will succumb to some coercive recoupment scheme.

Fourth, SSA, in its fervor to save money, has promulgated new regulations, which provide that funds being recouped in another program are to be treated as available income in the SSI program. While we are concerned about the legality of this action, SSA's actions are placing individuals in the untenable situation of attempting to survive somehow on $50 to $100 per month.

Fifth, despite mandatory statutory language, SSA is not providing notice of the right to seek waiver of alleged overpayments, nor is it granting many waivers. I have repeatedly been told that SSA staff have been ordered not to suggest the possibility of waiver, and to attempt to dissuade those interested in seeking waiver from doing so.

Exhibits C through E attached to my statement support this new attitude.

These are just a few examples of SSA's recent action. There are many more which reflect as poorly upon the Government. It would be irresponsible for this Congress to believe that SSA or any other governmental agency administering similar types of benefit programs will add the element of compassion missing in H.R. 4614, or voluntarily assure that constitutional safeguards are provided.

While I was not present at the hearing yesterday, I understand that HHS' representative stated, in response to a question from Mr. Hall, that 85 percent of all social security overpayments, and 65 to 75 percent of all SSI overpayments, were the fault of the recipient. These figures are extraordinarily high and not believable.

I urge the subcommittee to question HHS regarding both the source and the underlying assumptions for those figures. Our experience has been the exact opposite. SSA error, including its failure to properly record information supplied by the recipients, is the cause of the vast majority of overpayments and underpayments.

While I am not in a position to provide copies of these materials, two GAO reports should shed some light on this issue. In a report entitled, "Flaws in Control Over the SSI Computerized System Caused Millions in Erroneous Payments," GAO concluded in 1979 that internal control weaknesses in SSA's computer system and inadequate controls over the process by which field office personnel manually calculate benefit payments resulted in overpayments of over $25 million between 1974 and 1978.

And, in a report entitled, "Erroneous SSI Payments Result From Problems in Processing Changes in Recipient Circumstances," GAO found that 19 percent of the information which SSA received regarding changes in income, resources or other circumstances, was either lost, not effectively acted upon, or took too long to process.

I would therefore like to make the following recommendations: First, H.R. 4614 should be amended to prohibit the recoupment or administrative offset of retirement, survivors; disability, or other income maintenance benefits, except where the debt is the result of an overpayment in the same program.

This will assure that benefits are not eliminated at the times an individual is in need the most. It retains the element of compassion so vital to successful administration of such a program.

Further, it will minimize the incredible economic burdens which this bill will place upon already overburdened States and municipalities to assist destitute individuals. If the Federal benefits can be offset in the manner set forth in H.R. 4614, the penniless will turn to State and local governments for their subsistence. For the disabled, expensive State institutionalization may be their only alternative. And I might note, an inappropriate alternative as well.

First, if H.R. 4614 is not amended to create the much-needed exemption, then the following safeguards should be provided: First, at least where individual beneficiaries are concerned, the bill should, at a minimum, retain the current 6-year limitation for identification and processing of the alleged overpayment.

SSA is currently seeking to recover alleged overpayments created 8 to 10 years ago. The amounts are often very small, often is under $500, but significant to the recipient. It is often extremely

difficult for a recipient to obtain the evidence necessary to establish that they were not at fault in creating an overpayment which was allegedly created 8 to 10 years ago.

A second issue raised by the exemption from the statute of limitations is the availability of income maintenance benefits for administrative offset of debts, years, perhaps decades, after they were created.

The bill should prohibit such offset where the individual has not had notice of the alleged debt during the years when repayment of all or part of the debt might be possible. Further, notice and hearing procedures should be established that would permit the person to challenge the debt at the time that the Government agency seeks to offset the debt, prior to implementation of the offset.

Second, the bill should be amended to prohibit the offset of a complete benefit. At a minimum, it is critical that the bill require, even where waiver of recoupment is not available, that the Government's decision as to the amount to recoup monthly should be based on an analysis of the individual's financial need.

Further, the bill should prohibit the offset of any benefit where the beneficiaries did not cause the overpayments. This will be particularly important in protecting the survivors' benefits of innocent spouses and children.

Third, where the source of the debt is an alleged overpayment in a Government benefit program, or where any debt will be offset against a Government income maintenance benefit, the bill should prohibit billing for interest, costs, and penalty charges.

The bill does exclude contractual agreements from the imposition of current interest rates. In other words, business people will be able to limit their liability, while the poor will not.

Last year, Congress passed Public Law 97-177, the Prompt Payment Act, requiring the United States to pay interest on bills which it has not paid within 30 days. These provisions apply to debts owed to businesses. They do not apply to SSA delays in implementing favorable decisions which often exceed 5 months, nor to situations where SSA has underpaid an individual. Surely the flip side should also be true. Interest and penalties should not be charged against individuals where the Government income maintenance benefits are involved.

Finally, while it may be appropriate for the Government to contract with private bill collectors in order to collect business debts and loans, there is no justification whatsoever for subjecting elderly, blind, disabled and poor individuals to such procedures.

In a statement before the subcommittee on June 10, Thomas Cooper, from the American Collectors Association, made two points of major concern to beneficiaries.

First, he stated that the Federal Government needs private collection agencies because special knowledge and skills are required by collectors to get people to pay past-due accounts, particularly when they can't or don't want to pay. As a matter of public policy, it is entirely undesirable for the Federal Government to hire agencies to use their special knowledge and skills to coerce payment from elderly, blind, disabled or poor beneficiaries who can't pay.

Second, Mr. Cooper attempted to assure the subcommittee that collection agencies will behave, basically because they know that

credit grantors are highly conscious of the procedures used, because they are deeply concerned that the good reputations they have built be maintained. As SSA's own actions reflect, it does not have such a good reputation to maintain, and therefore, there apparently will be no incentive for collection agencies to conduct themselves in an ethical and businesslike manner.

To the extent that agencies such as SSA will be authorized to utilize private collection agencies, we support the inclusion of these agencies and Government debts under the Privacy Act and the Fair Debt Collection Practices Act.

With regard to the Privacy Act, there should be specific language which limits the types of information provided to private debt collection agencies to information regarding the amount of the debt, and the location of the person.

The ruling of the Third Circuit Court of Appeals in *Harris* v. *Dobb,* that a per capita tax debt levied by a Pennsylvania taxing district is not a debt under the Fair Debt Collection Practices Act raises serious questions regarding whether the act would apply to debt collectors contracting with agencies, such as SSA, to collect alleged overpayments. The provision in H.R. 4614 eliminates that concern.

I hope this statement is helpful, and I thank you for providing me with the opportunity to testify today.

[The statement of Ms. Sweeney follows:]

TESTIMONY

OF

EILEEN P. SWEENEY

OF THE

NATIONAL SENIOR CITIZENS LAW CENTER

BEFORE

THE SUBCOMMITTEE ON

ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

OF

THE COMMITTEE ON THE JUDICIARY

ON H.R. 4614

"THE DEBT COLLECTION ACT OF 1981"

U.S. HOUSE OF REPRESENTATIVES

JULY 15, 1982

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SUMMARY of the WRITTEN STATEMENT
of
EILEEN P. SWEENEY, STAFF ATTORNEY
NATIONAL SENIOR CITIZENS LAW CENTER
JULY 15, 1982

H.R. 4614

The current abuses in the Social Security Administration's collection practices as well as several public policy considerations raise serious questions regarding the advisability of including income maintenance benefits, such as Social Security, Supplemental Security Income, Black Lung, Veterans', and Aid to Families with Dependent Children within the coverage of H.R. 4614.

The following amendments to H.R. 4614 are recommended:

1. Government income maintenance benefits should be exempt from H.R. 4614's coverage.

2. If government income maintenance benefits are not exempted, the following protections should be included:

A. (i) The current six year statute of limitations should be retained for actions based upon overpayments of governmental benefits. (ii) Offset of other debts against income maintenance benefits should be prohibited where the individual was not notified of the alleged debt during years when repayment could have been possible. (iii) Notice and hearing procedures should be established which permit the individual to challenge an administrative offset prior to the government's implementation of the offset.

B. (i) Offset of the full benefit should be prohibited. The determination of the amount to be offset should be based upon an analysis of the individual's financial need. (ii) Offset of any benefit should be prohibited where the beneficiary did not cause the debt or overpayment.

C. Interest and penalty charges on alleged overpayments in a government benefit program or upon any debt to be offset by governmental benefits should be prohibited.

D. The government should not be authorized to contract with private bill collection agencies to collect alleged overpayments in government benefit programs. However, if such authority is provided, it is critical that the provision of H.R. 4614 subjecting such private agencies to the Privacy Act and the Fair Debt Collections Practice Act be retained. Further, to bar access to intimate details of beneficiaries' lives, the use under Privacy Act should limit the types of information which will be provided to such collectors.

I am Eileen P. Sweeney, a staff attorney at the National Senior Citizens Law Center (NSCLC). I am testifying today at the invitation of the Subcommittee and am most appreciative of this opportunity to express our concerns about H.R. 4614.

NSCLC is a national support center, specializing in the legal problems of elderly poor people. We are funded by the Legal Services Corporation and the Administration on Aging. Pursuant to the Law Center's Legal Services Corporation grant, we provide support services to legal services attorneys throughout the country with respect to the legal problems of their elderly clients. Under the Administration on Aging grant, NSCLC provides training and planning assistance to the states, and is developing strategies to resolve the legal problems of older people without the direct delivery of services. My responsibilities include working with legal services and aging advocates on the Social Security and Supplemental Security Income problems of their clients. In recent months, NSCLC has received numerous requests for assistance from advocates whose clients are the victims of the Social Security Administration's creative, and often illegal, debt collection practices.

My purpose today is to present to you some of the serious consequences to the poor, the elderly, and the disabled who may be the victims of H.R. 4614. While there is a definite need for the federal government to improve its overall success in collections, it does not follow that such procedures should apply against poor, elderly, or disabled individuals. First, policy considerations dictate against such a result. Second, the costs, both in terms of human suffering and governmental expenditures, do not support such procedures. And, finally and perhaps most importantly, the

current excesses and illegal actions of the Social Security Administration raise serious questions regarding the desirability of providing such broad authority in the areas of recoupment of overpayments and setting off other debts against government benefits whose purpose is income maintenance.

CURRENT SSA ACTIVITY

Recent actions of the Social Security Administration provide a frightening view of the atrocious behavior likely to follow enactment of H.R. 4614 in its current form. SSA's actions support the conclusion that inclusion of collection of benefit overpayments in H.R. 4614 will result in severe economic deprivation for elderly and disabled individuals, their survivors and dependents. Examples of recent SSA debt collection activity include:

1. In January, 1982 SSA issued a notice of proposed routine use pursuant to the Privacy Act. 47 Fed. Reg. 1025 (January 8, 1982). According to the proposal, SSA could release virtually any information in a beneficiary's file to a private debt collector for use in collection of an SSA overpayment. As written, private collection agencies would have access to the most intimate facts about some of the most vulnerable individuals in our society. It is not difficult to imagine an abusive collection agency using a person's mental impairment against him/her in order to coerce repayment and/or exacerbate the person's condition. After substantial Congressional and public outcry at both the timing and contents of the notice, SSA informally indicated its intention to withdraw the proposed use. However, more recently, it has indicated its intention to use debt collection agencies on an experimental basis.

2. Meanwhile, SSA's own staff is making even the more abusive collection agencies look like lambs.

A. SSA has sent letters to elderly beneficiaries which threaten the prospect of many of the penalties included in H.R. 4614 (penalties, interest) if the person does not pay immediately.

B. Despite the fact that SSA does not have the statutory authority to recoup overpayments created in the SSI (Supplemental Security Income) program from OASDI (Old Age, Survivors, and Disability Insurance) benefits*, and despite the fact that HHS has requested the Congress to provide such authority**, SSA has sent out notices to OASDI recipients telling them that they were overpaid when they received SSI and "for your convenience," SSA will be happy to withhold "the full amount" of your OASDI check until the amount is repaid. (Exhibit A). SSA never mentions that it can not require such recoupment nor does it tell the recipient of his/her right to seek waiver of recoupment, pursuant to 42 U.S.C. §1383(b) and 20 C.F.R. §416.550.

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*There is only one exception to this rule: Effective July 1, 1981, 42 U.S.C §1320a-6 permits the Secretary to withhold from an OASDI back-award the amount of SSI paid to the individual during any of the months covered by the back award.

**In its 1983 Budget proposals, the Administration specifically requested statutory authority "allowing for cross program recoveries of SSI overpayments." Budget of the United States Government, Fiscal Year 1983, page I-K 45. The budget documents explained that the government wishes to recover overpayments to individuals from available Social Security benefits." Major Themes and Additional Budget Details, Fiscal Year 1983, page 61.

C. If the person who receives Exhibit A does not reply, SSA then sends a letter threatening to terminate the person's OASDI if he/she does not respond. (Exhibit B). It is reasonable to assume that SSA knows that it does not have the statutory authority to carry out that threat. It is simply relying upon the fact that an elderly or disabled person, relying in whole or large part on OASDI to survive, will not take the risk that SSA will act upon its threat and therefore will succumb to some coercive recoupment scheme. This will happen even though the person will not be able to meet basic subsistence needs.

D. SSA is assuring that basic subsistence needs can not be met. Until recently, if a person's income dropped below the SSI level as a result of recoupment of an overpayment in another benefit program, such as OASDI, the person was entitled to receive an amount of SSI which brought the person's income up to the SSI level. While minimal, the SSI benefit level at least attempts to assure a minimum level of decency for all aged, blind and disabled people. SSA, in its fervor to save money, has heartlessly promulgated new regulations, 47 Fed. Reg. 13792 (April 1, 1982), which provide that funds being recouped in another program are to be treated as available income in the SSI program. While we have concerns about the legality of this action, SSA's actions are placing individuals

in the untenable situation of attempting to somehow survive, in some cases, on $50 to $100 per month.

E. SSA's zealousness in debt collection has been at the expense of the statutory and constitutional protections afforded to SSI and OASDI beneficiaries whom SSA believes have been overpaid. First, despite mandatory statutory language*, SSA is not providing notice of the right to seek waiver of alleged overpayments nor is it granting many waivers. I have repeadtedly been told that SSA staff have been told not to suggest the possibility of waiver and to attempt to dissuade those interested in seeking waiver. A memo from Sandy Crank, SSA Associate Commissioner for Operational Policy and Procedure, Exhibit C, to SSA staff bears this out:

> Development and implementation of the plan is predicated on a shift in SSA's philosophy regarding overpayment resolution, i.e, emphases on recovery (rather than waiver or write-off) and on the speed of that recovery. (Emphasis in the original, page 1)

The harshness, as well as illegality in light of the statute, of this new policy is reflected in two SSA local interpretations of the new policy:

> "In very rare circumstances, a request for waiver of the overpayment will be considered. If waiver is to be approved, the Administration must find that both conditions of without fault and inability to repay the overpayment are met. These cases are very rare." Memo of Robert P. Fleminger, District Manager, SSA, Grand Rapids, Michigan (Exhibit D)

> "Although the overpaid person may be completely blameless in causing the overpayment, the fact that

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*42 U.S.C. §§404(b), 1383(b).

> the person incorrectly (or inappropriately) received government funds is reason enough to expect payment. In unusual circumstances, a waiver of repayment of the overpayment can be allowed." Debt Management Bulletin, Region V, SSA, No. 81-1. (Exhibit E, page 4).*

These are just a few examples of SSA's recent actions. There are many more which reflect as poorly upon the government. It would be irresponsible for this Congress to believe that SSA or any other governmental agency administering similar types of benefit programs will add the element of compassion missing in H.R. 4614 or voluntarily assure that constitutional safeguards are provided. Further, given SSA's behavior, it is difficult to imagine what action by a private collection agency SSA would find abusive. Any monitoring of quality via contractual obligations is illusory.**

RECOMMENDATIONS REGARDING H.R. 4614

Given the breadth of the power accorded the government under H.R. 4614 as well as SSA's current practices, the following situations are very likely to become the norm:

> SSA informs Mrs. A, age 70 and a widow, that before they were married, Mr. A borrowed $50,000 from another federal agency in order to redevelop his failing

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*In this memo, SSA characterized a request for waiver as "a request for a very serious concession on the part of the government." Id. at 5, and mentioned SSA's interest in eliminating "a great deal of subjectivity" from the waiver determination. Id. at 3. In other words, SSA wishes to eliminate any element of compassion from its collection process.

**SSA's failure to monitor physicians performing consultative referral exams in the disability programs, despite the importance of the quality and accuracy of their exams, bears this out. In September, 1981 and March, 1982 the Social Security and Oversight Subcommittees of the Ways and Means Committee jointly held hearings to investigate the serious problems which have resulted from SSA's failure to monitor the quality of work performed by consultative physicians.

business. Mr. A made the monthly payments on the loan until he suffered a stroke many years later. His business failed with his health and the remainder of the debt went unpaid. Mr. A received disability benefits for himself and Mrs. A until he became 65. When he died three years later, Mrs. A began to receive survivor's benefits. That is her sole source of income. Then, SSA tells her that there was an outstanding balance on the loan of $7,000 principal when Mr. A ceased making payments ten years earlier. SSA wants not only the $7,000 but also the interest, costs and penalty charges. Mrs. A faces the prospect of years without any source of income. Under SSA's current regulations, she will not be eligible for SSI. What is this person to do?

In 1975, Mrs. B, now aged 85, lived with her grandson's family for five months before she entered a nursing home. Prior to that time, she had lived alone and received SSI. When she moved in with her grandson, she informed SSA of her move. SSA never recorded the fact and did not reduce her benefit amount to reflect the change in living circumstances. Mrs. B had no reason to know that, if she was not paying rent to her grandson, her SSI might be reduced. Now, seven years later in 1982, SSA discovers that they paid Mrs. B approximately $75 too much for each of those five months. They tell Mrs. B, who now lives in a nursing home and receives the $25.00 SSI benefit for personal needs, that they want to her to repay not only $375 but also interest, penalties and costs. The figure will most likely exceed $1200. Because SSA wants to withhold all of Mrs. B's $25.00 benefit, she will not receive another benefit for at least three years, when she will be 88 years old.

These are not extreme examples. The factors are all too common and reflect the types of calls NSCLC receives daily. It is from this reference point that I make the following recommendations:

1. Government income maintenance benefits should be exempt from H.R. 4614's coverage. H.R. 4614 will mean disaster, total financial insecurity, for thousands of elderly, disabled and poor federal pensioners and welfare recipients. H.R. 4614 should be amended to prohibit recoupment or administrative offset of retirement, survivors, disability or other income maintenance benefits except

where the debt is a result of an overpayment in the same program.

This will assure that benefits are not eliminated at the times when individuals need them most. It retains the element of humanity and compassion so vital to the successful administration of such programs. Further, it will minimize the incredible economic burdens which this bill will place upon already over-burdened states and municipalities to assist destitute individuals. If federal benefits can be offset in the manner set forth in H.R. 4614, the penniless will turn to state and local governments for their subsistence. For the disabled, given state payment schemes, expensive institutionalization may be their only alternative.

2. If government income maintenance benefits are not exempted, steps should be taken to protect beneficiaries. If H.R. 4614 is not amended to create this much-needed exemption, then the following safeguards should be provided:

A. Statute of limitations. The bill permits the United States to identify, pursue and collect a debt at any time. SSA is currently seeking to recover alleged overpayments created 8, 9 or 10 years ago. The amounts are often very small, such as under $500, but significant to the recipient. It is often extremely difficult for the recipient to obtain the evidence to establish that he or she was not at fault in creating the alleged overpayment. At least where individual beneficiaries are concerned, the bill should, at a minimum, retain the current six-year statutory limitation for identification and processing of the alleged overpayment.

A second issue raised by the exemption from the statute of

10, 1982 Wilbur D. Campbell, Acting Director of the Accounting and Financial Management Division of the General Accounting Office, justified imposing interest on overpayments on the theory that because interest is not charged, "debtors have a financial incentive to delay repayment of debts." (page 5). Adding interest payments to an alleged overpayment to a 75 year old SSI recipient on a clearly fixed, minimal income, will not increase the likelihood of repayment. It will, however, increase the likelihood of either (a) longer periods of recoupment due to larger, always growing debts, and/or (b) individuals deciding to forego payment of rent or purchase of food in order to repay a debt which should be waived, in order to avoid the accumulation of further interest and penalty charges.

E. Procedural protections: The bill should specify that nothing in the bill is intended to revoke any of the procedural protections available in the various benefit programs. In addition, procedures should be created which permit a beneficiary to challenge, prior to implementation of the offset, any offset proposed by the government against an income maintenance benefit.

F. Use of private bill collectors: While it may be appropriate for the government to contract with private bill collectors in order to collect business debts and loans, there is no justification for subjecting elderly, blind, disabled and poor individuals to such procedures.

In his statement before this Subcommittee on June 10, 1982, Thomas A. Cooper, Director of Public Affairs, American Collectors Association, made two points of major concern to beneficiaries. First, Mr. Cooper stated that the federal government needs private collection agencies because, "Special knowledge and skills are required by collectors to get people to pay past due accounts, particularly when they can't or don't want to pay." (emphasis added) (pages 2 and, see also, page 5) As a matter of public policy, it seems highly undesirable for the United States government to hire agencies to use their "special knowledge and skills" to coerce payment from elderly, blind, disabled or poor beneficiaries who "can't" pay.

Second, Mr. Cooper attempted to assure the Subcommittee that collection agencies will behave, basically because they know that "credit grantors are highly conscious of the procedures used because they are deeply concerned that the good reputations they have built be maintained." (page 3) As SSA's own actions reflect, it does not have such a good reputation to maintain, and therefore, there apparently will be no incentive for collection agencies "to conduct themselves in an ethical and businesslike manner." (Id.)

To the extent that agencies such as SSA will be authorized to utilize private collection agencies, we support the inclusion of these agencies and government

DEPARTMENT OF HEALTH & HUMAN SERVICES — Social Security Administration

Refer to
237-18-3429

Room 250
Park Square Building
31 St James Avenue
Boston MA 02116

223-7392

June 2, 1982

[redacted]
Boston, Ma. 02118

IMPORTANT NOTICE

OVERPAYMENT AMOUNT 646.74

On April 23,1982 we sent you notification that you were overpaid on Supplemental Security Income, and you therefore owe the U.S. Government money.

To date we have not heard from you. You MUST call me at the above number so we can discuss the disposition of thie overpayment, If we do not hear from you by 6/18/82 we will be forced to suspend payment of your Social Security Checks.

If you cannot make full refund at this time, please refund as much as you can and contact us to arrange for refunding the balance in monthly installments. For your convenience, we can withhold monthly installments from your Social Security checks.

If you wish to discuss a different method of repaying the overpayment, you MUST call me before the above date.

Sincerely,

Robin Johnson

Robin Johnson
Service Representative

DEPARTMENT OF HEALTH & HUMAN SERVICES

Refer to: SJ

Memorandum

Date: NOV 05 1981

AM-14-6

From: Associate Commissioner
for Operational Policy and Procedures

Subject: SSA Debt Management--INFORMATION

Date 11/
Distribut
DM
ADM
OS
FR
OA
CR
SR
CDC
DRU
FILE

To: See Below
(SSA-OOPP-DMPT-81-46)

The Social Security Administration's two top operational priorities for the next two years are implementing the 1981 legislation and improving debt management. The strategy for improving debt management concentrates on debt collection. The SSA Debt Collection Action Plan (Attachment) outlines the tasks to be undertaken to meet our debt collection goals. The two major goals are:

- to resolve old debts by the end of Fiscal Year (FY) 1983 by using special efforts; and
- to establish policies, procedures and systems that allow us to remain completely current at all times on our accounts receivable.

In general terms, the goal is to retire debt at approximately the same rate at which new debts are established and to resolve old debts as quickly as possible.

We have begun the significant task of implementing the SSA Debt Collection Action Plan which hones in on the collection, prevention and detection of all SSA administered program overpayments.

Development and implementation of the plan is predicated on a shift in SSA's philosophy regarding overpayment resolution; i.e., emphases on recovery (rather than waiver or write-off) and on the speed of that recovery. Therefore, it is imperative that all SSA operating personnel be kept informed of the agency's position and of on-going activities. For this purpose, a General Series Program Circular has been prepared

ADDRESSEES
All Regional Commissioners
All Area Directors
All DOs/BOs/TSCs
All Resident Stations
All SSAPSC's, DIO and ODO
Thru: OCO AB/NWinn

end will be received by operating personnel by eerly December 1981. Baaically, the circular will provide generel information regarding the plen, those stepa thet have alreedy been taken end the immediate role of each employee involved io overpayment reaolution and recovery.

This memorandum providea an overview of debt manegement in SSA that includea background information on Preaident Reagen's directive, the applicability of the Preaidential Directive to SSA's accouots receivable, the problem definition, the problem aolution end FY 1982 and FY 1983 projected overpayment collections.

1. Background - Preaidentiel Directive

As a result of atudiea and recommendationa by the Generel Accountiog Office concerning the collection of debta owed to the Federal Government, Preaident Reegan iasued a directive on April 23, 1981 io which he noted thet, "The burden of delinquent debt owed to the Federal Government continuea to grow each year and is contributing to our aerious problem of infletion. We muat again establiah the principle that debta to the Federel Government muat be paid." In response to thia directive, Federal agencies are required to ioatitute " . . . an aggreaaive program for atrengthening Executive Branch debt collection practicea . . ."

The Office of Manegement end Budget (OMB) has provided agencies witb the following objectives and guidelinca for complying with the Preaident's directive:

A. Objectivea aa aet forth in OMB Bulletin 81-17

1. "Implementing eggreaaive debt collection practicea to quickly recover that portion of the current backlog of delioqueociea deemed collectable;

2. "Implementing effective (debt) manegement procedurea to prevent unnecessary new delinquencies; and

3. "Taking firm action to recover newly occurring delinquencies and defaults."

B. Guidelinea aa aet forth io OMB'a Report on Strengthening Federel Credit Management - January, 1981

1. "Orgenizetional reaponaibility for servicing eod collecting receiveblea should be lndependent of the credit extenaion (benefit payment) functions in agencies."

2. "Managera should be held directly accountehle for their performance in credit manegement end debt collection."

3. "Accurate, comprehenaive, timely reporting of receivables and the condition of those receivablea muat be eatsbliahed."

4. "Increasing the In-house capability and effectiveness of agencies through the commitment of additional personnel, hardware and software for automated support. Without automated support, it would be physically impossible for most agencies to deal timely and effectively with the sheer volume of accounts."

5. "The government should be allowed to report delinquent and defaulted debtors to credit bureaus, thereby effecting their credit ratings and encouraging timely payment."

6. "The government should utilize private sector resources to supplement its collection efforts."

II. Applicability of Presidential Directive to SSA's Accounts Receivable

In order to establish a debt management plan, SSA first had to identify the sources of its accounts receivable; I.e., those items and responsible parties for which and from whom collections are to be made because of sums owed. Once it was determined that more than 99 percent of SSA's accounts receivable consist of program administered overpayments, the decision was made that the SSA plan would focus on these overpayments. The concept of "debt management" as it applies to SSA program administered responsibilities refers to two activities: collection and prevention; i.e., those activities which identify and collect monies owed to the Federal Government as a result of program overpayments and those which prevent the creation of program overpayments and ensure that potential overpayment creating situations are effectively detected and monitored.

III. Problem Definition

Although SSA's debt management performance has been improving and is expected to continue to do so, the following problems have hampered SSA's action to minimize the loss of monies caused by overpayments and associated recovery costs:

1. Lack of definitive across-the-board strategy for debt prevention, detection and collection actions.

2. Lack of ADP capabilities for the effective support of billing, accounting and management information functions.

3. Statutory, judicial, regulatory and procedural impediments to debt prevention and debt collection actions.

SSA's immediate debt collection problems are primarily associated with delinquencies in the repayment of overpayments under the Disability Insurance (DI) and Supplemental Security Income (SSI) programs. These delinquency problems are two-fold: (1) the existence of current delinquencies and (2) the trend of continual accretion of delinquencies.

A major reason for the delinquency problems is a dependency on recovery by cash collection because there is less opportunity to recover DI and SSI overpayments by benefit adjustment (offset). When offset is not available, SSA does an inadequate job of collecting its debts. These poor collection results occur because of a lack of prompt, personal attention to the pursuit and resolution of delinquencies. This conclusion is supported by the successful results obtained in a number of SSA locations when management emphasis, concentrated effort and personal accountability measures have been locally instituted.

IV. Problem Solution - Debt Management Initiatives

The SSA Debt Collection Action Plan which was prepared in response to OMB Bulletin 81-17, was forwarded to OMB on September 15, 1981. The plan is the method by which SSA will meet its commitment to improve its debt management. This plan indicates that the major SSA initiatives are:

1. Clarify and concentrate debt management responsibilities;

2. Improve and standardize debt management policies, procedures and practices;

3. Improve ADP support for debt management functions;

4. Establish improved money management incentives and procedures; and

5. Establish improved capabilities for debt management analyses and controls.

V. Fiscal Year 1982 and 1983 Projected Amount of Overpayment Collections Made by Utilizing SSA's Debt Collection Action Plan

Based on implementation of the aforementioned initiatives, the chart below summarizes for FY 1982 - 1983, the anticipated amount of overpayment collections, collection costs and the net savings. These projected figures are part of SSA's amended FY 1983 Budget.

($ in thousands)

	FY 1982	FY 1983
OASI		
o Anticipated Collections.....	$570,278	$828,529
o Collection Costs.....	82,206	82,708
o Net Savings.....	$488,072	$745,821

DI

o Anticipated Collections.....	$116,603	$133,340
o Collection Costs.....	31,001	29,518
o Net Savings.....	$ 85,602	$103,822

SSI

o Anticipated Collections:		
o Federal Assistance.....	$276,253	$298,007
o State Supplementation 1/.....	65,104	70,289
o Collection Costs.....	65,759	64,428
o Net Savings.....	$275,598	$303,868

BL

o Anticipated Collections.....	$ 1,168	$ 1,172
o Collection Costs 2/.....	306	282
o Net Savings.....	$ 862	$ 890

All Federal Programs

o Anticipated Collections.....	$1,029,406	$1,331,337
o Collection Costs:		
o Program.....	179,272	176,936
o Special.....	4,485	6,419
o Net Savings.....	$ 845,649	$1,147,992

1/ State supplementation collected from overpaid recipients is paid to States and thus does not produce savings for the Federal budget except to the extent that such corrective action reduces the Federal fiscal liability for overpayments. Administrative costs of making such collections are borne by SSA.

2/ Costs of collecting Black Lung overpayments are not available since this activity is captured with all post-entitlement activities in SSA's work measurement system. Amounts shown are estimates paralleling DI program experience.

In conclusion, it is obvious that the success of our Debt Collection Action Plan is dependent upon a firm commitment by all personnel. Your contributions toward the formation of the plan and its initiatives have been very helpful. In the months ahead, your opinions and assistance will continue to be solicited and you will be kept informed of all major milestones as the implementation proceeds.

Sandy Crank

Attachment

cc:
All SSA Executive Staff
Chief, Administrative Law Judge
All Regional Chief Administrative Law Judges
All Field Assessment Officers
All Hearing Offices
All OOPP Office Directors

DEPARTMENT OF HEALTH & HUMAN SERVICES — Social Security Administration

Refer to

250 Monroe NW
Grand Rapids MI 49503

May 25, 1982

Dear Director:

Recently President Reagan ordered the heads of all Federal Departments and Agencies to institute more effective debt collection practices and better credit management. President Reagan said, "We must again establish the principle that debts to the Federal Government must be paid."

Based on this directive, Social Security Commissioner, John Svahn, has ordered that debt management be a number one priority and that special debt collection units be set up in every district office to control all overpayments more closely. The Grand Rapids office is responsible for the control of overpayments in the following countiss: Kent, Newaygo, Barry, Montcalm, Ionia, Allegan, and part of Ottawa.

Initial emphasis is on collecting the entire overpayment in a lump sum. Installment payments, while discouraged, will be accepted. Interest and penalties may be instituted on late installment payments in the near future.

In very rare circumstances, a request for waiver of the overpayment will be considered. If waiver is to be approved, the Administration must find that both conditions of without fault and inability to repay the overpayment are met. These cases are very rare.

The normal appeals process (reconsideration, hearing, Appeals Council review, court action) is available within the 60 day time frame allowed for appeal. The appeals process should be used only if the individual disagrees with the accuracy of the overpayment, i.e. the amount of the overpayment or reason for its occurrence.

This information is provided to keep you informed of our current policies regarding all overpayments. I know that often your agency receives inquiries which should be directed to us. If you have any questions, please contact us at 456-2241.

Sincerely,

Robert P. Flesinger

Robert P. Flesinger
District Manager

SI/lll

DEBT MANAGEMENT Bulletin

Memo to Staff 12/14/81

ADVANCE COPY

REGION V

Social Security Administration

No. 81-1

This is the first in a series of Region V Debt Management Bulletins designed to keep you informed of debt management activities. With the full support of Commissioner Svahn, activities have been developed at a rapid pace in central office, and consequently here in the regional office, in reaction to the Office of Field Operation's directives. These bulletins will contain information which will apprise field managers and technical employees of the new initiatives as decisions are being made and communicated to us.

DECISIONS ON DEBT MANAGEMENT POLICY

You will recall that the Commissioner has designated Sandy Crank, the Associate Commissioner for Operational Policy and Procedures as Debt Management Coordinator. He has made a number of policy decisions designed to intensify and increase the effectiveness of our collection efforts. Extensive development of most of these issues will be needed before they can be implemented. These decisions are being presented here, with information on the general status of implementation, as they provide a good picture of the direction we are headed:

Issue 1: Current administrative tolerances for debt collection efforts differ among SSA's programs and no longer reflect the costs of debt collection activities.

Decision: The following administrative tolerances on overpayment development will apply to all programs SSA administers:

a) Overpayment under $1 - Send automated notices; do not send manual notices. Grant waiver automatically if requested.

b) Overpayment $1 to $29.99 - Send automated notices; send manual notice if payment adjustment available or if notice is being prepared for another reason.

c) Overpayment $30 to $199.99 - Notice always sent; pursue collection except:

1) estate
2) bankruptcy
3) referral to General Accounting Office (GAO)

d) Overpayment $200 to $599.99 - Notice always sent; full pursuit except GAO.

e) Overpayment over $600 - No administrative tolerance.

Status: Systems requests are being initiated and Program Operations Manual System (POMS) instructions are being revised. These tolerances may now be used in all Supplemental Security Income (SSI) cases since SSI overpayment notices are manually prepared. They should not be used for title II or Black Lung cases until POMS instructions are received.

Issue 2: We will propose 100 percent adjustment of a benefit to recover an overpayment if full and immediate refund is not received. We should establish a policy for response if the debtor balks at 100 percent withholding.

Decision: We will negotiate repayment terms with the most lenient installment or refund agreement being a maximum of 36 months and a minimum of $10 per month.

Status: POMS instructioos are being revised. You may implement immediately for SSI cases.

Issue 3: Interest and Penalties

Decision: The charging of interest for installmeot payments and addition of penalties for late payment are being considered.

Status: The provision is not being implemented at this time pending approval and issuance of regulations. Systems capability also needs to be developed.

Issue 4: Mandatory cross program adjustment to collect overpayments of title II, title XVI, and Black Lung benefits.

Decision: SSA is studying the feasibility of submitting a legislative proposal.

Status: The provision is not being implemented at this time as legislati is necessary.

Issue 5: Under current policy, deduction of title II benefits for repaym .t of overpayments is not considered income for title XVI purposes

Decisloo: Define deductions for repayment of overpayments as income for purposes of title XVI.

Status: Implemeotation is delayed pending systems changes and further instructions.

Issue 6: Waiver can be requested at any time.

Decision: Change to allow requests for waiver only within 60 days of receipt of the overpayment notice unless good cause or a substantial change in circumstances is established.

Status: The provision is not being implemented at this time pending a regulatory change.

Issue 7: Release of information on debtors to credit bureaus and referral of uncollected accounts to collection agencies.

Decision: Commercial credit bureaus and collection agencies should be used. A pilot test will be conducted to determine referral criteria.

Status: The provision is not being implemented at this time as the Office of General Counsel review is pending.

Issue 8: Referral of certain overpayments to the General Accounting Office for collection or for referral to the Department of Justice.

Decision: SSA should cease referral to GAO and retain responsibility for collection or referral to the Department of Justice.

Status: Delay implementation until procedure worked out and revised POMS instructions are issued.

Issue 9: There are an estimated 1.5 million recipients of SSA program benefits for whom we do not have a social security number. Enumeration of these recipients would provide a basic tool in preventing and identifying overpayments.

Decision: SSA will take action to identify and issue social security numbers to the backlog of unenumerated recipients and tighten administrative procedures to ensure against a recurrence of this problem.

Status: Delay implementation until POMS instructions are received.

Issue 10: There is a great deal of subjectivity in determining necessary and ordinary living expenses to determine if a recovery would "defeat the purpose of the Act."

Decision: Set specific income and resource standards to determine if recovery would "defeat the purpose of the Act" to eliminate the need to consider expenses in individual cases.

Status: Delay implementation until standards are determined and POMS revisions are issued.

POMS DRAFT REVISIONS

While work is being done to implement the above changes, the Office of Operational Policy and Procedures is revising the POMS instructions on overpayment development. The regions have each commented on a draft revision of the instructions. Decisions have been made to revise procedures to reflect a clear commitment to overpayment recovery. The POMS revisions should be issued in late December. In the meantime, the following overpayment recovery policies have been identified for immediate implementation by field offices. (These policies apply to all titles unless otherwise indicated.):

I. General Policy Statements

Philosophy of Overpayment Resolution:

SSA's philosophy in the resolution of overpayments is to (1) recover the overpayment, (2) recover the overpayment as quickly as possible, and (3) where overpayment recovery is inappropriate (e.g., waiver is approved) or impossible, resolve the debt (by correctly categorizing it or referring it to the proper authority) as quickly as possible. The emphasis in SSA's approach to overpayment resolution is on recovery because overpayments represent incorrect expenditures to trust fund or tax monies and should be recovered whenever possible. Although the overpaid person may be completely blameless in causing the overpayment, the fact that the person incorrectly (or inappropriately) received government funds is reason enough to expect repayment. In unusual circumstances a waiver of repayment of the overpayment can be allowed.

Debt Resolution Process:

The overpayment resolution process begins at the point the debt is discovered. The fact, amount, and liability for repayment of the overpayment should be communicated to the overpaid individual as soon as possible. If the overpayment is discovered because of an oral communication (telephone call or interview), the liability for repayment of the overpayment should be communicated during the first oral contact. Written notice regarding the overpayment is always sent. The written notice should always request full and immediate refund. Whenever the liable person is in payment status, the notice should propose withholding of all benefits until the overpayment is recovered, unless full refund is received within 30 days of the notice.

If the liable person requests a lower rate of withholding or an installment repayment plan, the fastest repayment plan possible should be negotiated. This repayment plan should never exceed 36 months and should never involve monthly payments less than $10. Where the liable person claims he cannot repay the debt this quickly, he must document all of his income, resources and expenses, and SSA will decide the proper repayment plan.

If the liable person requests [illegible]
to pay a portion of the debt immediately and be relieved from further liability), the compromise can be accepted if it is for at least 60 percent of the debt or if it represents the most a person can pay based on his income, resources, and expenses. (When payment offset will be available within the next 3 months, compromise is only allowed if the offer is for at least 80 percent of the debt.)

If the liable person requests a reconsideration of the finding that led to the overpayment, this request for reconsideration should be treated in the same manner as any other request for reconsideration (i.e., not involving an overpayment). The reconsideration request should be processed as quickly as possible to enhance the agency's potential for collecting the overpayment if the reconsideration results in a confirmation of the overpayment.

If the liable person requests waiver of repayment of the overpayment, the request should be developed. A request for a waiver of repayment is a request for a very serious concession on the part of the government. In order to qualify for a waiver of repayment of an overpayment, the liable person must always be found to be without fault in causing or accepting the overpayment. In addition, the person must prove that it would "defeat the purpose of the Act" to collect the overpayment; or that it would be against equity and good conscience to collect the overpayment.

Control of Overpayment Repayment

After response (or lack of response) to the initial notice of overpayment, overpayments are considered collectable if there was no request for waiver or reconsideration. If the overpayment is to be collected by payment adjustment, the system will control the collection of the overpayment (after any necessary initial triggering of the automatic payment adjustment). If payment adjustment stops before full collection of the overpayment, a notice requesting full refund of the remaining overpayment should be sent.

On all overpayments that are to be repaid by refund (in full or by installment payments), very strict control of the account must be maintained in order to ensure maximum "collectability" of the overpayment. If possible, the responsible office should send monthly bills for installment payments due and should develop a special procedure to address delinquency in overpayment repayment. As an overall goal, the special procedure should identify delinquencies within ten days of when the payment should have been made and, through a combination of mailing dunning letters, making telephone calls, and making personal visits, prevent the debt from becoming delinquent for three months in a row.

When the debtor does not respond to SSA's requests for repayment; or when he or she responds that he is unwilling to repay the overpayment, there are four possible actions which SSA can take: (1) request repayment of the debt through payment offset from persons who have contingent liability, (2) suggest a "compromise" proposal to the liable person, (3) refer the case to GAO (which will make a final collection effort and refer the case to the Department of Justice for suit if appropriate), or (4) suspend collection of the overpayment (cataloging the overpayment as a "bad debt"). When any of these actions are taken, the liable person should be notified. In the case of the suspension of the pursuit of the collection, the notice to the liable person should inform him or her of the liability for the debt and of the fact that future program payments will be withheld to collect the debt. For certain categories of bad debt, SSA will occasionally remind the liable persons of their debt and request repayment.

II. Specific Policy Changes

NOTE: As mentioned above, the POMS overpayment instructions (in GN 02201-02290) are being revised and new transmittals will be issued. Although the specific POMS instructions are not out yet, the following procedural changes can be implemented on a case-by-case basis. Other, more specific, changes will be implemented by the new transmittal. These changes apply to title XVI only unless otherwise specified:

Administrative Tolerances

The tolerances explained under Issue 1 in the "Decisions on Debt Management Policy" portion of this bulletin should be implemented for SSI overpayment development effective immediately.

Refunds

In every overpayment, full refund is the preferred method of repayment (all titles).

Notices

All initial notices of overpayment will include a request for refund. When adjustment of current benefits is possible, 100 percent adjustment will be proposed. Title XVI letters, SSA-8170U2 and SSA-8173U2 are obsoleted. The SSA-8171U2 should be used. It is suggested that DO's "bill" debtors who are paying on monthly installments and they should establish strict follow-up controls. (The attached exhibit contains a sample billing format.)

Adjustment

If a debtor requests withholding of a current payment at a rate other than 100 percent, we may adjust at a rate no lower than $10 per month and not to exceed 36 months. If the debtor requests adjustment at less than $10 per month or for a period to exceed 36 months, financial hardship must be established. If an individual whose overpayment is being withheld becomes ineligible for benefits, the remainder of the overpayment must be refunded within the original 36 month period. Also, adjustment of a title II check to recover a title XVI overpayment should be suggested by the DO.

Referral

When an overpayment is referred to GAO a certified notice should be sent to the individual.

Compromise Offer

If the debtor has proposed a compromise offer and offers a payment, the DO should accept the payment and provide a written receipt which clearly indicates that acceptance of the payment does not represent acceptence of the compromise offer. Also, criteria for acceptance of a compromise has been changed to accept an offer of 60 percent (formerly 75 percent); if collection by adjustment is expected to be available within three months, the offer must be 80 percent. Compromise settlements must now be paid within 30 days of acceptance of the offer.

Fragmentation of an SSI Overpayment

The prohibition against fragmentation is eliminated. Overpayments may now be addressed for prior closed quarters even if the current quarter cannot be addressed.

Reconsideration

Waiver development is no longer routinely undertaken when an individual requests reconsideration. Also, if adjustment has been initiated and the recipient requests reconsideration within 10 days, reinstate but do not repay any amount withheld.

Summary

The total outstanding debt due SSA at this time has accumulated to about $1.9 billion. The initiatives listed here, as well as many more which will be forthcoming, will enable us to give full support to the Commissioner's expectation that we can substantially improve our collection performance.

Our next issuance in this series of bulletins will provide information on several model debt collection units which will be established in this region in the next few weeks. Regional training plans and other policy and procedural changes will also be covered.

Exhibit

Sample Bill (Where Monthly Billing is Employed)

Return your payment to:
SOCIAL SECURITY ADMINISTRATION

Account due
Date due
Claim number

BILL FOR PAYMENT DUE

DO NOT SEND CASH

Make your check or money order payable to:

Social Security Administration

Be sure to include your claim number on your payment

Return this part of bill with your payment in the enclosed envelope

Keep this part of the bill for your records

DO NOT SEND CASH

IF YOU HAVE ANY QUESTIONS ABOUT YOUR PAYMENT, PLEASE CALL

				Claim number	
Previous balance	Amount paid	Date paid	New balance	Account due ___	Date due

Form SSA-4778

Mr. HALL. I take it that you are opposed to H.R. 4614?

Ms. SWEENEY. I am not opposed to the idea that the Government should have the ability to collect debts from people who can afford to pay them, or to attempt to attain collection at times when people are in a position to work to repay the debts.

I think that collecting overpayments or debts from elderly and disabled people——

Mr. HALL. On page 1 of your statement, you talk about illegal debt collection practices of the Social Security Administration—do you have any evidence of anything that has been done that is illegal in the criminal sense that I assume you used it here in this statement?

Ms. SWEENEY. Sir, I am not charging criminal violations, I am charging civil violations of the Social Security Act.

Mr. HALL. Are you stating that the Social Security Administration has used illegal debt collection practices?

Ms. SWEENEY. I am suggesting that the Social Security Administration is violating the Social Security Act.

Mr. HALL. Are they illegal acts?

Ms. SWEENEY. Yes; I would maintain they are illegal acts. An action is being filed in New York today, or yesterday, on some of the issues I have raised in my statement this morning.

Mr. HALL. What kinds of actions are being found?

Ms. SWEENEY. For instance, the—sending a notice to people that says that—doesn't inform them of their right to seek waiver of overpayment.

Mr. HALL. Is that an illegal act?

Ms. SWEENEY. Yes, it is. The Social Security Act specifically says the Secretary shall provide for waiver, and shall grant waiver in circumstances where a person is going to be without——

Mr. HALL. Are suits being filed in New York on that——

Ms. SWEENEY. The suit in New York is on two issues: One, is the statute of limitations, that Social Security is going back more than 6 years in attempting to collect overpayments——

Mr. HALL. Who is filing that suit; what agency?

Ms. SWEENEY. My program, as well as a number of legal services programs in New York represent the plaintiffs in the action.

Mr. HALL. Is the Legal Service Corporation filing a suit against the Government?

Ms. SWEENEY. Sir, it is not the Legal Services Corporation, it is legal services attorneys who represent indigent individuals who haven't——

Mr. HALL. Well, are they funded by the Legal Services Corporation, those people who are filing those suits?

Ms. SWEENEY. Yes, sir.

Mr. HALL. Are those two being filed against an arm of the Federal Government by legal services attorneys?

Ms. SWEENEY. That is correct, sir, they are being filed against Richard Schweiker.

Mr. HALL. You state further that recent actions of the Social Security Administration provide a frightening view of the atrocious behavior likely to follow enactment of H.R. 4614 in its current form.

What type of atrocious behavior, in addition to the illegal acts, do you have reference to?

Ms. SWEENEY. Mr. Hall, I have affidavits that are being filed in the New York case, of people who went in and sought waiver of recoupment; 74-year-old women who were told they should go out and get a job.

I have calls from people whose clients are mentally retarded, who went in and were told that this is no problem, you are getting a cost-of-living increase next month, why don't you sign it over to us, and they did.

Mr. HALL. Well, are these people who have received funds that they should not have received in the past? Regardless of their age.

Ms. SWEENEY. That is not clear. One of the problems with a lot of the notices that Social Security is sending out is they don't give you any indication of when the overpayment was created, or why the overpayment was created. People are not in a position to assess that.

I am sure some of them may have had some involvement in the fact that they were created——

Mr. HALL. I am not taking the position that there may not have been certain acts done in the past, it may be exactly as you and I might think that it should be, but I do feel that you have made a broad sweep against H.R. 4614, claiming that it is nearly a violation of the moral law of this country to try to collect debts that are owed by people to this Government.

Now, I just don't think that you represent a cross section of the people of this country by taking that position. Now, if there are amendments that can be made to this fact, that will make it more palatable to everyone concerned, especially the elderly people. I know that is your concern, I certainly don't censure you one bit for that. I have the same feeling.

But I just noticed language that you use throughout your statement—top of page 3, and I am quoting you, "Meanwhile, SSA's own staff is making even the more abusive collection agencies look like lambs."

Ms. SWEENEY. I will not retract that statement, sir. I believe that that is the case. The things that are happening right now——

Mr. HALL. Of course, you have the right to your opinion. I just don't always follow—I don't believe that is the fact. You have your opinion and I have mine.

Ms. SWEENEY. True.

Mr. HALL. "SSA has sent letters to elderly beneficiaries, threatening the prospect of many of the penalties." What type of a letter do you think should be written to someone who owes the Federal Government a legitimate debt?

Ms. SWEENEY. Mr. Hall, I think that even the Congress could be concerned about the letters that Social Security is sending out. If a person receives a letter that says, "Dear Mr. So-and-So: You owe us $200. You should know that we in the Congress are very concerned about the fact that you have not repaid this debt, and that we are thinking about charging you interest and penalty charges and a list of a number of things." I think that is a concerning position.

The Congress does not authorize the Social Security Administration to make those types of threats.

Mr. HALL. I don't think that it is up to the Congress to write letters to the Social Security Administration people.

Ms. SWEENEY. That is the letter that is being sent out right now.

Mr. HALL. I don't think that you can tailor-make a letter for the many thousands of people who owe debts to the U.S. Government. And I think you will agree, that you must have a letter that informs people that they owe a legitimate debt to the Federal Government.

Now, I don't believe this whole theory that you must get on your hands and knees and plead with somebody to pay back a legitimate debt. I don't subscribe to that theory.

As a matter of fact——

Ms. SWEENEY. Sir, I think that maybe——

Mr. HALL. Just a moment. As a matter of fact, I think that is one of the problems we have in this country today, is that so many people think that the Government is just in the process and in the business of giving away money. And if there is a legitimate expense that should be paid back to the Government, that nobody should make any legitimate effort, creative effort to try to collect that money.

That is why we owe $1 billion today, many more possibly. I don't believe that the contents of your letter, where you use the term, and I have underlined all of it, "threatening letters to terminate somebody's benefits; heartlessly promulgated new regulations"—and I am looking at a copy of a letter here that you—a comment on page 5—that you have some question about; a memo from Sandy Crank, SSA Associate Commissioner for Operational Policy and Procedure, exhibit C: "The SSA staff bears out the fact that—" you say that they have been told not to suggest the possibility of waiver. And you say, "development and implementation of the plan is predicated on a shift in SSA's philosophy regarding overpayment resolution. That is, emphasis is on recovery, rather than waiver or writeoff, and on the speed of that recovery."

What is wrong with that? What is wrong with trying to collect this money? What is wrong with not taking the position, let's just write it off; let's waive it and not collect it? That is the purpose of this whole plan.

Ms. SWEENEY. What is wrong with it is the Social Security Act specifically requires the Secretary to waive overpayments where a person is not at fault and where it would be against equity or good conscious to collect the overpayment. They are violating the Social Security Act. That is the illegal action that they are taking. That is what I am trying to explain to you, is that it is a very serious problem here where you have got the Government already not following the laws that are on the books.

And I am suggesting to you that H.R. 4614 is—it takes such a broad sweep itself, and as a result, I have taken a broad sweep in response to it, I guess is your objection, that I think you have to recognize what the implications of that are going to be for people who are not going to be in a position to repay those debts, or who, if they do agree to repay them, it is going to be because they do not eat; they do not pay their rent; they do meet their health costs.

And it seems to me that the result of this bill will be after a very short period of time, to create a large class, a new class of destitute

individuals in this country, which has not currently existed, because the existence of the SSI program, the social security program, the veterans' benefits programs, all of that is going to be wiped out for people who did not create the overpayments, where the Government's computer made errors, where the Government did not put information in the case files that should have been there; did not act upon information people gave them.

Those people are going to be faced with overpayments at 17-percent interest, which means that every few years, the whole debt itself is going to be double in size, and they are not going to have anything to live on when they get to be old or disabled—they are not going to—even now, when they are old or disabled.

Spouses and children are not going to have anything to live on, because perhaps a wage earner at some point earlier in his life incurred a debt they knew nothing about. I mean, you essentially would be pulling out the whole purpose of the Social Security Act, as well as the similar Government benefit programs that exist to assure that there is some basic income maintenance program for people in this country.

That is all I am suggesting. I have no objection that the Government should attempt to get debts. I am as offended as you are that there are people who don't pay the debts, when I am sure you and I do pay our debts. It just seems to me that there are certain people who are—who, given their circumstances—and I don't even think all elderly people should be exempt. There is a lot of people who have plenty of money who could pay their debts.

But there are some people who are living on $3,000, $4,000 a year or less from SSI or social security or VA or civil service, who are not in a position to be subjected to this type of a bill, and are not going to be able to repay it without incredible——

Mr. HALL. Does your testimony that you have before your organization indicate that there are many, many people who have never been notified that they have been overpaid, prior to receiving some notice from the Social Security Administration or some other agency that they are going to have their amounts stopped until they make a payment back to the Government?

Ms. SWEENEY. Some of the people have not received notice. Some of them will acknowledge that at some point years ago, they received notice. Many of the people are mentally retarded or marginally retarded, do not have representative——

Mr. HALL. Let's talk about the normal person. You are taking the position that everyone who is drawing social security or some payment who is over 65 years of age, or whatever the occasion may be, is retarded——

Ms. SWEENEY. No, certainly not. But there are——

Mr. HALL. Many people who are drawing these amounts, and who have been overpaid, are just as healthy as you and I. I know a lot of people who have been notified that they owe this money back, but there has never been a followup, any concerted effort on the part of the Federal Government to make any collections.

And it appears to me, that is what you have some objection to, is that you must go to each one of these people on an individual basis, not write any letter that has any implication to it that we are

going to follow up, and collect what is owing; that that somehow is degrading to those people.

Now, I would be the first one to say that if you have a destitute person that had no way in the world to make a payment, even though it had been an overpayment, that those conditions should ameliorate what we are trying to do.

But just to cross—just taking the whole thing broadly, I do have some very serious objections to some of the positions that you are taking. I am not questioning your sincerity 1 minute, but I believe that sometimes we have people who appear before these committees who have a very special interest in seeing to it that what we are trying to do in this committee, and in this Congress, to collect some of this delinquent money, is just maybe to wash it broadly, and no one takes it too seriously.

I don't propose to follow that type of procedure. I recognize the gentleman from Oklahoma, Mr. Synar.

Mr. SYNAR. No questions, Mr. Chairman.

Mr. HALL. Mr. McClory, the gentleman from Illinois.

Mr. MCCLORY. Thank you very much, Mr. Chairman.

What percentage of the social security beneficiaries are dependent solely upon social security benefits?

Ms. SWEENEY. Well, sir, the figures are very high. I don't have them with me——

Mr. MCCLORY. The figures are actually very low, aren't they, percentage-wise? I mean, the very high percentage of persons on social security have other sources of income; isn't that correct?

Ms. SWEENEY. Sir, to the extent that there is additional income, social security—as I recall—I would be happy to provide to you—even with additional income, the incomes average $5,000. And without the additional, it is just $3,000.

Mr. SYNAR. Would the gentleman yield?

I am on the Select Committee on Aging, and I can tell you that two-thirds of the people on social security, that is the majority of income, the check they receive is the majority of income, and for one-third of that two-thirds group, it is the total income. That is the generally accepted figure.

Mr. MCCLORY. So, the one-third of two-thirds are—which would be what, about one-sixth—depend solely on social security. Others have additional sources of income. I thought it was about that small a percentage.

And, yet, I gather that you would want collections of social security and veterans' benefits and overpayments that are made in those areas to be exempted from this kind of legislation.

Ms. SWEENEY. Yes, sir, either that or that there be some evaluation by the Government as to the person's financial need prior to any offset. There certainly are people who have substantial investments, whose social security benefit is not critical to their livelihood, but they are really the exception, and I think it would be very important to recognize that there is a large group, even the group that has something in addition to social security, it is very little. If it is anything, it may be SSI, which means that social security is very low.

Mr. MCCLORY. This would be some kind of a new agency or bureau which would undertake an analysis of the financial status

of each one of the delinquents or—in the broad sense, they call them deadbeats, people that don't pay their legitimate debts, that you would want an analysis made by some—I suppose some Federal agency before initiating steps under the Debt Collection Act.

Ms. SWEENEY. I wouldn't suggest the creation of a new bureaucracy. It seems to me that the agency which is going to be offsetting the debt should be in a position to obtain that information.

Mr. MCCLORY. Probably with additional personnel.

Well, you are aware, of course, the jeopardy in which the social security system finds itself, and with—I don't know, I would imagine overpayments, which amount to many millions of dollars, that to relieve the persons that have received excessive amounts is going to deprive other needy persons and the fund of resources and assets; isn't that correct?

Ms. SWEENEY. Sir, I don't see that—first of all, it seems to me that the types of Government debts that are going to be offset against this benefit will not in any way inure to the benefit of other social security recipients. This money will be taken out of the trust fund to pay other debts.

Mr. MCCLORY. Well, there is no question, is there, that persons that receive overpayments receive inordinate amounts—they receive larger amounts than they are legally entitled to. That is the reason why the Government tries to collect back the excessive payments; is that correct?

Ms. SWEENEY. With regard to the overpayments in social security benefits, it is true that people who get more are——

Mr. MCCLORY. You think that is equitable? Is that fair to the——

Ms. SWEENEY. The Social Security Act has provisions which says that if it is not the person's fault, than—and if they cannot afford to repay it, that the person should not be required to pay that. Congress has made that decision.

Mr. MCCLORY. Isn't that sufficient?

Ms. SWEENEY. Currently, it apparently is not sufficient. The calls we are getting, the people are not being told of their right to obtain waiver. A second problem is that what I foresee happening is the vast majority of debts that are going to be offset against social security benefits have nothing to do with social security. They are going to be things that are incurred at different times in different people's lives.

And as a result, are going to drain money out of the trust fund to the benefit of no one is a social security beneficiary.

Mr. MCCLORY. Well, it seems to me that what you are advocating to this committee is that some persons should be preferred over other persons as far as being relieved of their just obligations, and I think that is an offense to older persons, it seems to me, and being an older person, I would regard it that way.

Ms. SWEENEY. Sir, I think it is an equal offense to older people to find them without any way to feed themselves or clothe themselves or pay their rent, and that is what you are setting up.

Mr. MCCLORY. We are not talking about welfare, are we? Are we talking about—no we are not. Are you coming here to tell us that social security is a welfare system?

Ms. SWEENEY. I am not just talking about social security. That happens to be the one that I know the most about. But, SSI bene-

fits are equally covered by this provision, and as I said, and Mr. Hall questions whether this is really heartless or not, but the Social Security Administration has taken the position that any money that is being recouped in any other program is to be treated as available income for SSI.

Therefore, there will be no welfare benefits for anybody to fall back on if their social security benefit is being recovered. Furthermore, it seems to me, that the way this bill is written, SSI benefits could be recovered just as easily as any other as an offset for a debt.

There will be nothing from the Federal Government for an old person to rely upon or a disabled person to rely upon the way this bill is written.

Mr. MCCLORY. For those persons who have received excessive amounts, we are not talking about persons who have legitimately received the appropriate amounts, but we are talking about collection of overpayments, of debts that are legitimately owed by persons that have been overpaid for whatever reason.

Ms. SWEENEY. Mr. McClory, these people probably didn't bank that money. They are not going to have anything to rely upon, if 50 years ago, they may have gotten some extra money from the Government.

Mr. MCCLORY. Isn't there a practice now, and you know there is, that persons who have received overpayments are relieved of those overpayments if they can demonstrate that they are incapable of repaying them? These kinds of cases come through my office just all the time. What you want to do is have a blanket exemption applying to persons of all economic means who happen to be beneficiaries or the recipients of a Federal program.

And it seems to me that this kind of blanket exemption is precisely what we should not provide to persons who are legitimately owed the debt, and legitimately can pay the debt.

Ms. SWEENEY. I understand that, sir, that is why I would say that the alternative would be to do some sort of a need evaluation. The statute as it currently reads does not waive a debt where somebody was at fault in creating the debt. Social Security takes a very limited view of what that means.

But I should also point out to you that the Social Security Act provision talks about waiving overpayments that were created in that program. There is no basis there for waiving a debt that was created in the Farmers Home Loan Bureau or something else. Nothing there will permit that unless there is something in this bill that you folks are working on. There is nothing to cover that situation.

Mr. MCCLORY. Thank you, Mr. Chairman.

Mr. HALL. We have a vote on, and we will recess for 10 minutes, and come back to have Mr. Kindness direct his questions.

[Recess.]

Mr. HALL. While we are waiting, Ms. Sweeney, let me ask you one question: Why should agencies continue to pay benefits to those who have been overpaid in the past, particularly when it is the fault of the recipient?

Ms. SWEENEY. Well, first of all, the vast majority of cases, it is not the fault of the recipients.

Mr. HALL. Assuming it is.

Ms. SWEENEY. If it is the fault of the recipient, I think there is some serious questions. I think that the real problem here is how people survive; how people are going to live; what is an elderly person or a disabled person going to do with no money, and I think that this Congress has, over and over again, been concerned and compassionate about assuring that people have some way to survive, whether that be through the social security benefits, which often are very low; the average social security benefits are only around $350 per month; or SSI, or veterans' benefits, whether they be welfare or based upon——

Mr. HALL. Is it your position that if a recipient has been overpaid because of his or her fault, that regardless of the circumstances, that they should continue to be paid?

Ms. SWEENEY. No, sir. What I am concerned about is that currently, there should be mechanisms that you can collect money back over a long period of time. You don't have to take, somebody owes you $1,000; you don't have to withhold their benefit for 6 months. You can have them pay that back to you over 3 years. There are a number of things that you could do that would make it easier for the person to survive while the Government gets repaid.

Mr. HALL. But you think it could be paid back if it has been overpaid because of the fault of the person?

Ms. SWEENEY. Sure. I have no objection to that.

Mr. HALL. Mr. Kindness, the gentleman from Ohio, is recognized.

Mr. KINDNESS. Thank you, Mr. Chairman.

I just wanted to clarify the record about current practices of the Social Security Administration. The experience that we have in our offices in dealing with overpayment seems to be that the rule of ability to pay is applied when the case is reviewed.

Is your experience different from that?

Ms. SWEENEY. Yes, sir. Right now, notices are going out to people that say, "SSI recipients"——

Mr. KINDNESS. I am not talking about notices. I am talking about final determinations.

Ms. SWEENEY. Well, the problem is what happens when somebody gets that first notice. Some of the people——

Mr. KINDNESS. I am talking about the final determinations.

Do you disagree?

Ms. SWEENEY. If a person goes in, if they get the right person, then it is very possible that they will get a reasonable recoupment set up for them that somehow meets their needs. The problem is that a lot of people get this notice that says, "We are going to recoup the full amount of your check"——

Mr. KINDNESS. Do you disagree with the proposition?

Ms. SWEENEY. That some people do OK? I don't disagree with the fact that——

Mr. KINDNESS. No, I asked that is—let's change the question. What is the measurement rule with respect to the ability to pay the supply by the Social Security Administration and the final determination of these overpayments?

Ms. SWEENEY. There is no standard that I know of, no actual dollar figure that I know of that are used. It is very much a case-by-case judgment basis.

Mr. KINDNESS. Would you maintain that if ability to pay is raised as a question, that the Social Security Administration does indeed take that into account?

Ms. SWEENEY. Sometimes. The calls that we are receiving reflect that they are not taking it into account in many, many cases right now. The ability to pay is really—should mostly be a factor if the person is at fault. If the person is not at fault, then it becomes a factor in seeking a waiver, full waiver of the recoupment.

And they are not even telling people about their ability to get waiver in many cases, to obtain a waiver in many cases right now. There has been a big change in attitude and policy in social security. The result is a lot of pressure on local people to bring in the dollars.

As a result of that, I think you are seeing less and less flexibility in terms of what people can do. There is—I have not seen it—my understanding is there is a nationwide memo out that takes away from the person who interviews the individual for waiver purposes, takes away the final authority to decide whether or not waiver is appropriate.

It no longer is the person who actually interviews the person, sees the person, making that decision. There are some big shifts going on. I would say that any time a congressional office intervenes, the person is going to get a better shake, or any time an advocate intervenes, they are going to do somewhat better than the many, many people who had to deal with social security on their own.

Mr. KINDNESS. Then you answer is you disagree?

Ms. SWEENEY. I would disagree across the board. I would say that, certainly, that the cases you are seeing reflect the fact that they are doing that in some cases. I just cannot say the blanket statement that what you are seeing is happening in every case. I don't believe that it is.

Mr. KINDNESS. Thank you. That is exactly the answer I wanted. I don't think you can make blanket statements such as I made, nor can I quite go along with some blanket statements that were in your testimony.

There is a difference from one case to another in these circumstances. The point of your testimony, as I understand it, is that there should be room for the determination of these individual circumstances; is that correct?

Ms. SWEENEY. I think the element of evaluating need is going to be critical in these cases, and there is nothing in the bill that provides that.

Mr. KINDNESS. Thank you.

Mr. HALL. Thank you, Ms. Sweeney, for your testimony.

Mr. KINDNESS. Thank you.

Mr. HALL. I am going to change the order in one instance, of the testimony this morning.

Next, we will have a representative of the National Conference of State Legislatures, Ms. Cleta Deatherage, chairwoman, House Appropriations Committee, State of Oklahoma, chairman, NCSL Fiscal Affairs and Oversight Committee.

And at this time, I recognize Mr. Synar, the gentleman from Oklahoma.

Mr. SYNAR. Thank you, Mr. Chairman, and let me take this opportunity on behalf of the subcommittee to welcome a dear, old friend. And I want to tell you how far we go back. It is very nice to have someone from Oklahoma testifying, and also someone so capable, and someone who is as well-respected in the area of appropriations.

Cleta Deatherage has been a spokesman for fiscal responsibility in Oklahoma and this country, and her capacity with the National Conference of State Legislatures reflects that. We are very honored that she is testifying today, and look forward to her testimony.

Mr. HALL. Thank you, Mr. Synar. We are glad to have you with us today, Ms. Deatherage and if you would proceed and identify the gentleman who sits to your left.

TESTIMONY OF CLETA DEATHERAGE, CHAIRWOMAN, HOUSE APPROPRIATIONS COMMITTEE, STATE OF OKLAHOMA; CHAIRWOMAN, NSCL FISCAL AFFAIRS AND OVERSIGHT COMMITTEE, REPRESENTING THE NATIONAL CONFERENCE OF STATE LEGISLATURES, ACCOMPANIED BY TIM MASANZ

Ms. DEATHERAGE. Thank you, Mr. Chairman.

I appreciate the opportunity to appear here today, and thank Mr. Synar for his kind remarks. This is Mr. Tim Masanz, who is with the National Conference of State Legislature in our Washington office, and I do appreciate, and on behalf of the National Conference of State Legislatures, we appreciate the opportunity to appear here today and express some of our concerns about this particular legislation.

I have presented to the committee copies of written testimony on House Resolution 4614. I will not read that testimony here today, but rather make a very few brief remarks, and then we will be glad to try to respond to questions, and any questions that I cannot properly respond to, I will yield to Mr. Masanz for further clarification.

Mr. HALL. Let me ask, would you move the microphone a little bit closer?

Ms. DEATHERAGE. Certainly.

Thank you. My name is Cleta Deatherage, I am the chairman of the Appropriations and Budget Committee of the Oklahoma House of Representatives. I am also the chairman of the Fiscal Affairs and Oversight Committee of the National Conference of State Legislatures, and it is in that capacity that I am appearing here today to bring to the committee some concerns that the NCSL has about this particular piece of legislation.

The first that we would like to bring to your attention is our concern about the language of the bill. The language is not clear, and it is somewhat inspecific. The concerns that we raise here today are those about the fact that many of the things that we are really concerned about are included in this legislation only by inference, and not by specific mention.

The first point, for instance, if Congress intends to include State and local governments in the term individuals, we wish that you would say that, instead of just including by inference a notion that

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State and local governments are individuals for purposes of Federal debt collection.

It is quite a different matter, we believe, to talk about debts that are owed or claims that are owed by State or local government grantees or contractors instead of talking about individuals who may owe individuals debts to the Federal Government.

And it would be our suggestion that you treat those differently, that they are really not the same, and that you treat them in a different manner.

For one thing, the mobility of State and local governments is certainly different from that of individuals. There is not the danger that the State government is going to disappear in the middle of the night, so that you won't be able to find us.

I will just—there is a sort of folklore story in Oklahoma about the fact that just before statehood, just after Oklahoma had been admitted to the Union, but prior to actual adoption of our Constitution, there is a story that goes around when you are growing up that the State Capitol of Oklahoma was stolen in the night from Guthrie, Okla. and moved to Oklahoma City.

That is actually not true, but we all love to tell that story. There was actually a statewide vote to move the capital. But nonetheless, it didn't get far, and we are not going to go anywhere. So we would urge that if you are going to establish procedures for Federal collection, debts that State and local governments owe to the Federal Government, then we would hope that you would set up a different procedure other than that established for individuals.

Mr. HALL. That is not always true, because during the Civil War, the State of Missouri one night left, taking the archives with them——

Ms. DEATHERAGE. But they came back.

Mr. HALL [continuing]. Took their archives with them in the middle of the night, traveled to Marshall, Tex., where they established the government of Missouri. And it functioned there for about 7 months.

And we have a monument in my home town of Marshall, Tex., showing where the government of Missouri was set up and served for 6 months as the capital of the State of Missouri, so sometimes these entities can leave in the middle of the night, and maybe some should, but go ahead.

Ms. DEATHERAGE. Well, I can just say that having had—since there has been experience with another capital moving to Texas, it is clear it won't happen again.

So we would suggest that there be a separate section of the statute if you are going to talk about State and local governments, that that be treated separately, because what we are really talking about is a need for some clarification in the laws governing audits of Federal contracts and grants, and we would certainly concur that the procedures with regard to finalizing audits of State and local government contracts and grants are not clear, and we would urge the Congress to serious consider some method for clarifying and expediting disputed findings and audits of the Federal agencies for contracts and funds that go to State and local government.

We do not think that that is appropriate, necessarily, in this particular legislation, but if it is going to be included, then we would urge a separate addressing of those issues.

The second issue that we are concerned about is when does a claim become a debt? Just because a party claims that money is owed does not necessarily mean that that money is, in fact, owed.

One of the things that we are concerned about, as State governments, is that a Federal audit finding may be disputed by the grantee, and at what point does that claim of the audit finding become a debt, which is actionable for collection, and there are many issues involved with that.

We are concerned that there be a procedure for properly adjudicating any finding of misallocation of funds, or inappropriate use of funds. So, it seems that there needs to be some procedure for adjudicating that issue, and again, I am not speaking to the issues that you have just been discussing, about individuals; those are all separate issues.

But I think that there are certainly some constitutional problems unless you guarantee some due process procedure whereby the grantees, State or local governments, can dispute or at least be heard on the issue of whether or not the funds have been misappropriated or misallocated. And not just confer the unilateral authority on the Federal auditors to say the funds have been misallocated.

I serve as the chairman in our Legislature of our Joint Audit Committee, and I can tell you that many times, our auditors issue findings about appropriations and funds that have been spent by our State agencies, that the agencies come in and say, "Oh, no, you just don't understand. And our auditor just didn't understand the way the program worked," or "That auditor was new," or "That auditor just didn't understand, or misunderstood, or misinterpreted what the reality is about the use of the funds."

And I think that the audits themselves are very helpful. I would hate to see a situation where we would make the audit findings subject to no challenge or review, other than—and to make them actionable for collection, simply on their face, I don't think that any of us would feel comfortable with that kind of proceeding.

So we are very anxious to work with you, to work with this committee, and to work with the Congress in trying to come up with a better system. We are aware that there needs to be a better system for finalizing the audits; making sure that funds that have been improperly spent, if the funds are owed to the Federal Government, then we feel strongly that we ought to work out a procedure where those remedies can be established.

But we also would call to your attention the fact that as grantees as contracts, we really are performing a different function. We are trying, as State and local governments, many times what we—the function we play, the role we play is as an administrative unit for—sometimes, it sticks in claws, actually, that we are, in some regards, seen as an administrative units or divisions of the Federal Government—but nonetheless, for many of these, most of these categorical programs, the Federal Government provides funds and we provide, at the State and local level, administrative management and the implementation arm of the program.

So we are in this together. We are trying to work together to carry out the same end, which is to provide services to the very same constituencies and the same taxpayers for which the funds were appropriated by the Congress.

So it is not as though we are a recipient, we are not deriving—we all derive the same benefit. So we would urge that the Congress and this subcommittee work with us, and let us work with you in developing a procedure that can address the problems to make sure that the programs are properly managed, efficiently carried out, that funds that may be misallocated be repaid to the Federal Government, that we not be treated in the same sense as an individual.

I suppose the last issue that we would like to address and that is one that we are concerned about, and that is the issue of administrative offset.

Prior to this time, there has been no statutory authorization for administrative offset. That has been referred to in some rules and regulations, and there have been—there is currently pending a court action on the basis of one of the agencies, Department of Education, has presumed and said that the Federal Government has a common law right of administrative offset.

We are concerned about this issue of administrative offset, and believe that we would like to work with you to further develop that. If it is going to be authorized by the statute, then we think there needs to be some much clearer guidelines about that is to be utilized.

For instance, if an audit of our funds going to, say, the State department of mental health, finds that mental health funds have been misallocated, and therefore, the Department of Health and Human Services audit finding says that you used funds improperly.

Does that mean that funds for the State of Oklahoma going to the Department of Transportation can be utilized to offset funds that were misallocated in the department of mental health?

These are issues that are not clearly spoken to in this legislation, and again, we would just urge that some of these are very serious, have very serious budget implications for our States, and would urge you to work with us in trying to establish better procedures.

I will be glad to stop and try to answer questions. We have just tried to raise some points that we are concerned about, and I understand the intent of the legislation, and support what the Congress is trying to do in the broad sense, but we would like to work with you to try to finalize and fine-tune some of the issues that affect us.

Thank you, Mr. Chairman.

[The statement of Ms. Deatherage follows:]

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TESTIMONY

OF

REPRESENTATIVE CLETA DEATHERAGE

CHAIRPERSON: HOUSE APPROPRIATIONS COMMITTEE

OKLAHOMA HOUSE OF REPRESENTATIVES

ON THE

HR 4614: FEDERAL CLAIMS COLLECTION

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS
OF THE HOUSE COMMITTEE ON THE JUDICIARY

JULY 15, 1982
2226 RAYBURN HOUSE OFFICE BUILDING

SUMMARY OF TESTIMONY

SINCE THE FEDERAL CLAIMS COLLECTION ACT IS BEING APPLIED GENERALLY TO ALL FEDERAL FISCAL TRANSACTIONS INCLUDING INTERGOVERNMENTAL GRANTS, THIS COMMITTEE MUST FACE THE QUESTION OF THE APPROPRIATENESS OF A GENERAL POWER OF ADMINISTRATIVE OFFSET OF DISBURSEMENTS TO STATE AND LOCAL GOVERNMENTS CARRYING OUT THE RESPONSIBILITIES OF GRANTS AND COOPERATIVE AGREEMENTS. I BRING YOU THIS CONCERN TODAY BECAUSE THE LEGISLATION BEFORE YOU, HR 4614, WOULD FOR THE FIRST TIME PLACE THE TERM "ADMINISTRATIVE OFFSET" INTO A FEDERAL STATUTE. THUS, TO PREVENT FUTURE MISUSES OF WHAT COULD BE AN EFFICIENT AND EFFECTIVE TOOL, I URGE THE COMMITTEE TO IMPROVE THE LANGUAGE OF THE BILL TO AVOID THE APPEARANCE OF UNIVERSAL AUTHORIZATION OF THIS POWER. FURTHER, I ASK THAT A DISTINCTION BE MADE BETWEEN FEDERAL "CLAIMS" AND FEDERAL "DEBTS". THIRDLY, I ASK THAT REPAYMENT METHODS AND OTHER ADMINISTRATIVE MECHANISMS BE RELATED TO SPECIFIC LEGAL AUTHORITY IN ORDER TO MAKE IT CLEAR, FOR INSTANCE, THAT AGENCIES ARE NOT SIMPLY TO ACT JUST BECAUSE OFFSET IS FEASIBLE. AND FINALLY, I ASK THAT THIS LEGISLATION NOT BLINDLY CONFER LEGITIMACY TO THE POSITION THAT ADMINISTRATIVE OFFSET IS A COMMON LAW RIGHT OF THE FEDERAL GOVERNMENT, A DOCTRINE BEING PURSUED IN A GOVERNMENT PETITION BEFORE THE SUPREME COURT. CONGRESS SHOULD DECIDE SUCH A QUESTION OF LEGAL THEORY IN A MORE DIRECT MANNER.

On behalf of the National Conference of State Legislatures I thank you for this opportunity to share several concerns which State Legislators have regarding Federal Debt Collection procedures.

My name is Cleta Deatherage. I serve as the chairperson of the House Appropriations Committee in Oklahoma. I am also currently chairwoman of the Fiscal Affairs and Oversight Committee of the National Conference of State Legislatures. I am before you today to bring my own and my state's concerns as well as those of the National Conference of State Legislatures.

The Federal Claims Collection Act as passed in 1966, focused for the most part on permitting the compromise of claims less than $20,000. It was never intended to be the key controlling statute for intergovernmental grants management replacing the individual pieces of authorizing legislation and the Intergovernmental Cooperation Act of 1968 (Public Law 90-577).

A May 10, 1982 Federal Register notice brought quite a suprise when it carried proposed regulations by the Office of Human Development Services of HHS concerning new procedures governing the collection of debts owed by recipients of discretionary grants or cooperative agreements. It cited the Federal Claims Collection Act and pursuant regulations as its sole basis, stating that agencies "must take agressive action on a timely basis with effective follow-up to collect all debts owed to the United States by the public". It failed to distinguish between a federal "claim" and a "debt" owed the federal government. It further explained the agency's intent to step-up its use of administrative offset.

THIS FOCUS ON THE MECHANISM OF ADMINISTRATIVE OFFSET WAS BASED ON JOINT RULES ISSUED BY THE GENERAL ACCOUNTING OFFICE AND THE DEPARTMENT OF JUSTICE WHICH STATED THAT "COLLECTION BY OFFSET WILL BE UNDERTAKEN ADMINISTRATIVELY...IN EVERY INSTANCE IN WHICH THIS IS FEASIBLE". IT IS THIS RULE WHICH IS DRIVING GREATER AGENCY USE OF ADMINISTRATIVE OFFSET. THE DEPARTMENT OF HEALTH AND HUMAN SERVICES IS JUST ONE EXAMPLE.

SUCH AN UNSPECIFIED UNIVERSAL RULE WITH NO CLEARLY DEFINED CONSIDERATION OF WHETHER THE POWER IS AUTHORIZED -- AND NO DISTINCTION BETWEEN MATTERS ARISING FROM INTERGOVERNMENTAL GRANT PROGRAMS AND OTHER CONTRACT, LOAN OR PERSONNEL PAYMENT ISSUES -- HAS RAISED OUR CONCERN.

IT WAS ONLY AFTER FURTHER RESEARCH INTO DEBT COLLECTION PROCEDURES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES THAT ONE COULD FIND THAT FEDERAL CLAIMS DISPUTED BY THE SECOND PARTY WERE AT ALL TREATED DIFFERENTLY. EXCEPT FOR A FEW INDIVIDUAL GRANT-IN-AID STATUTES, PROTECTION FROM HHS OFFSET ACTION ONLY EXTENDED TO THE EXHAUSTION OF AGENCY PROCEDURES, SUCH AS DISPUTES PENDING BEFORE THE GRANT APPEALS BOARD. NO PROTECTION WAS MENTIONED FOR CASES APPEALED TO THE COURTS. IN FACT, DISCUSSIONS WITH AGENCY STAFF MADE IT CLEAR THAT NONE WAS INTENDED. IN ADDITION, INTEREST BEGINS TO ACCRUE ON ANY CLAIM FROM THE DATE OF A FINAL AUDIT. AGAIN, NO DISTINCTION IS MADE BETWEEN GOOD FAITH EFFORTS, AMBIGUOUS DIRECTION OR POOR MANAGEMENT.

SINCE THE FEDERAL CLAIMS COLLECTION ACT IS BEING APPLIED GENERALLY TO ALL FEDERAL FISCAL TRANSACTIONS INCLUDING INTERGOVERNMENTAL GRANTS, THIS COMMITTEE MUST FACE THE QUESTION OF THE APPROPRIATENESS OF A GENERAL POWER OF ADMINISTRATIVE OFFSET OF DISBURSEMENTS TO STATE AND LOCAL GOVERNMENTS CARRYING OUT THE RESPONSIBILITIES OF GRANTS AND COOPERATIVE AGREEMENTS. I BRING YOU THIS CONCERN TODAY BECAUSE THE LEGISLATION BEFORE YOU, HR 4614, WOULD FOR THE FIRST TIME PLACE THE TERM "ADMINISTRATIVE OFFSET" INTO A FEDERAL STATUTE. THUS, TO PREVENT FUTURE MISUSES OF WHAT COULD BE AN EFFICIENT AND EFFECTIVE TOOL, I URGE THE COMMITTEE TO IMPROVE THE LANGUAGE OF THE BILL TO AVOID THE APPEARANCE OF UNIVERSAL AUTHORIZATION OF THIS POWER. FURTHER, I ASK THAT A DISTINCTION BE MADE BETWEEN FEDERAL "CLAIMS" AND FEDERAL "DEBTS". THIRDLY, I ASK THAT REPAYMENT METHODS AND OTHER ADMINISTRATIVE MECHANISMS BE RELATED TO SPECIFIC LEGAL AUTHORITY IN ORDER TO MAKE IT CLEAR, FOR INSTANCE, THAT AGENCIES ARE NOT SIMPLY TO ACT JUST BECAUSE OFFSET IS FEASIBLE. AND FINALLY, I ASK THAT THIS LEGISLATION NOT BLINDLY CONFER LEGITIMACY TO THE POSITION THAT ADMINISTRATIVE OFFSET IS A COMMON LAW RIGHT OF THE FEDERAL GOVERNMENT, A DOCTRINE BEING PURSUED IN A GOVERNMENT PETITION BEFORE THE SUPREME COURT. CONGRESS SHOULD DECIDE SUCH A QUESTION OF LEGAL THEORY IN A MORE DIRECT MANNER.

LET ME SPEAK BRIEFLY TO EACH OF THESE CONCERNS. AS THIS WILL BE A CLEAR STATUTORY INCLUSION OF THE PHRASE "ADMINISTRATIVE OFFSET", THE CONGRESS SHOULD LISTEN CLOSELY TO ANY CONCERNS WHICH HAVE BEEN RAISED REGARDING ITS PAST USE. LET ME REFER YOU TO THE CONCLUSIONS OF THE GENERAL ACCOUNTING OFFICE (GAO) IN ITS REPORT, FEDERAL AGENCIES NEGLIGENT IN COLLECTING DEBTS ARISING FROM AUDITS, (AFMD-82-32, JANUARY 22, 1982). GAO STATED THAT WHEN AGENCIES USE OFFSET "THEY USUALLY DO NOT HAVE ADEQUATE ASSURANCE THAT THE PROGRAM ITSELF IS NOT REDUCED." GAO ALSO NOTED FROM SOME OF ITS REVIEWS "HOW OFFSET CAN BE INEQUITABLE."

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES (ACUS) RECOMMENDATIONS ON ENFORCEMENT IN FEDERAL PROGRAMS DO NOT LIST THE USE OF ADMINISTRATIVE OFFSET (RECOMMENDATION No. 71-9, 1 CFR 305.71-9). RESEARCHERS FOR ACUS IN THEIR FOLLOW-UP ARTICLE FOR THE VIRGINIA LAW REVIEW [VIRGINIA LAW REVIEW, VOL. 58, No. 4, 600] ADDRESSED THE USE OF A DEDUCTION OR OFFSET PRACTICE, ONE AUTHORIZED BY STATUTE [AT 690]. THE AUTHORS DID NOT RECOGNIZE A COMMON POWER TO TAKE SUCH ACTION. THEY DID, HOWEVER, REJECT THE PROPOSED ACTION TO ATTACH REVENUE SHARED FUNDS STATING THAT "[A]NY FUNDS WITHHELD SHOULD NOT BE...FROM THE FUNDS AVAILABLE TO THE STATE FOR THE FEDERALLY ASSISTED PROGRAM IN WHICH THE VIOLATION OCCURRED."

CONGRESS SHOULD BE DISTRUSTFUL OF THE HISTORY OF THESE PRACTICES. ADMINISTRATIVE ACTION ALONE HAS NOT BEEN PROVEN TO APPLY AN EQUITABLE REMEDY FOR A CASE IN DISPUTE -- IT HAS ONLY SUCCEEDED IN MEETING THE INTERESTS OF ONE PARTY.

FROM THE PERSPECTIVE OF STATE AND LOCAL GOVERNMENT, THE PRIMARY CONCERN I BRING YOU IS THAT THERE IS A TIME AND A PLACE FOR THE USE OF THIS MECHANISM AND THE FACT THAT FEDERAL REGULATIONS NOW CALL FOR IT "WHENEVER IT IS FEASIBLE" IS PROOF THAT IT IS NOT BEING TREATED IN A VERY SOPHISTICATED FASHION. THE BILL BEFORE YOU TODAY, BY AMENDING THE FEDERAL CLAIMS COLLECTION ACT, GIVES YOU THE OPPORTUNITY EITHER TO CLARIFY THE ORGINAL INTENT OF THAT LEGISLATION, OR TO BROADEN FEDERAL POWERS TO MAKE IT THE CONTROLLING STATUTE ON INTERGOVERNMENTAL GRANT DISPUTES. I URGE YOU TO MAINTAIN THE BOUNDARIES OF THE ORIGINAL LEGISLATION WHICH DO NOT ADD TO OR DIMINISH OTHER PROVISIONS OF LAW SUCH AS THOSE FOUND IN THE SPECIFIC GRANTING STATUTES.

SECONDLY, AND HOPEFULLY TIED TO THIS, I URGE YOU TO CLARIFY THE ORIGINAL ACT TO STATE THE LEGAL DISTINCTION BETWEEN FEDERAL "CLAIMS" AND FEDERAL "DEBTS". THE EXPERIENCE OF FEDERAL AGENCY IMPLEMENTATION OF THE LAW GIVES DRAMATIC PROOF THAT THIS DISTINCTION IS NEITHER UNDERSTOOD NOR RESPECTED. ONLY WITH THIS CLARIFICATION CAN STATE GOVERNMENT BE PROTECTED FROM SWIFT AGENCY REMEDIAL ACTION CLAIMING FUNDS PURSUANT TO AUDIT FINDINGS BEFORE THE MATTER CAN BE ADJUDICATED IN ACCORDANCE WITH LAW. PERHAPS YOU CAN GO TO GAO FOR INFORMATION ON THE PROBLEMS HERE. WE'D SUGGEST, IN PARTICULAR THAT YOU LOOK AT PRACTICES WHERE AGENCIES MIGHT HAVE OFFSET FROM GRANT FUNDS "ELSEWHERE IN THE GOVERNMENT". (SEE 45 FR 61794. HHS).

THERE'S NO TELLING HOW PROBLEMATIC THE FINAL RESULTS COULD BE. FOR ONCE, WE'RE HERE TO DISCUSS WHAT COULD BECOME A VERY SERIOUS PROBLEM, AND WE ASK YOUR ATTENTION BEFORE THE DAMAGE IS DONE.

THIRDLY, I ASK THAT LEGAL AUTHORITY BE EXPRESSLY DESCRIBED FOR ALL THE RELATED PROCEDURES AND MECHANISMS. PROCEDURES FOR BRINGING PARTIES INVOLVED IN A DISPUTE TO HEARINGS, OR REQUIRING RESPONSES WITHIN GIVEN TIME PERIODS, OR REQUIRING THAT DISPUTES BE BROUGHT BEFORE ADMINISTRATIVE HEARING BOARDS ARE NOT ON THE SAME LEVEL AS THE POWER OR AUTHORITY TO APPLY THE FINAL REMEDY, WHICH IS PRECISELY WHAT ADMINISTRATIVE OFFSET DOES. THIS DISTINCTION SHOULD BE RECOGNIZED, AND ALTHOUGH THE AGENCIES' HANDS SHOULDN'T BE TIED, FOR WE DO FEEL THAT EFFICIENT AND PROMPT AUDIT RESOLUTIONS AND "DEBT" COLLECTION PROCEDURES ARE IMPORTANT TO RESPONSIBLE GOVERNMENT AND CAN BE FAIR, PROTECTIONS MUST BE AVAILABLE SO THAT FINAL RESOLUTION IS NOT ENTIRELY IN THE HANDS OF ONE PARTY. THIS FINALITY IS JUDICIAL IN NATURE AND NOT ADMINISTRATIVE UNLESS EXPRESSLY AUTHORIZED.

THE FEDERAL GOVERNMENT MAINTAINS A $90 BILLION INDUSTRY OF SERVICE PROGRAMS THROUGH STATE AND LOCAL GOVERNMENTS. STATE AND LOCAL GOVERNMENTS ARE NOT FOLDING UP QUIETLY AND STEALING AWAY IN THE MIDDLE OF THE NIGHT. OUR DEBTS ARE NOT SERIOUS COLLECTION PROBLEMS. WE ARE AS RESPONSIBLE TO OUR CITIZENS AS THE FEDERAL GOVERNMENT, AND WE WILL BE AROUND FOR AS LONG AS THE FEDERAL GOVERNMENT. CLEARLY, IT IS A SERIOUS MATTER TO HOLD UP PAYMENTS THAT ARE DUE UNDER FEDERAL GRANT OBLIGATIONS WITH STATE AND LOCAL GOVERNMENTS. MANY STATE LAWS AND BUDGETS CONTAIN LIMITS ON EXPENDITURES, LIMITS ON REVENUE INCREASES, DEDICATED FUNDS WHICH CANNOT BE TRANSFERRED, AND CONSTITUTIONAL PROVISIONS REGARDING

TRANSFERRING FUNDS FROM ONE ACCOUNT OR BUDGET LINE TO ANOTHER. FEDERALLY-INITIATED ADMINISTRATIVE OFFSET , ESPECIALLY THOSE TAKEN ON FEDERAL "CLAIMS" ALONE, CAN RESULT IN A SERIOUS INTERRUPTION OF SERVICE, JEOPARDIZING THE VERY PROGRAMS THE GOVERNMENT IS TRYING TO IMPROVE. WHILE A SITUATION LIKE THIS MAY FALL UNDER THE TERM "NON-FEASIBLE" UNDER GAO STANDARDS, AND THUS BE AVOIDED, I, FOR ONE, WOULD PREFER MORE EXPLICIT PROTECTION. THE QUESTIONS ARE NOT WHETHER OFFSET SHOULD BE COST-EFFECTIVE OR LIKELY TO SUCCEED IN GETTING THE CASH, THE QUESTIONS ARE: IS THE FEDERAL CLAIM VALID, IS AN OFFSET AUTHORIZED AND PERMITTED BY LAW, AND IS AN OFFSET THE FAIREST REPAYMENT METHOD FOR THIS LEGAL DEBT.

FINALLY, AND I MAKE THIS POINT ONLY FOR YOUR INFORMATION, IN A CASE PENDING BEFORE THE SUPREME COURT THE FEDERAL GOVERNMENT ASSERTS THAT IT IS ITS COMMON LAW RIGHT TO ADMINISTRATIVELY OFFSET FUNDS. THERE ARE OTHER ISSUES TO THE CASE, BUT I URGE YOU THAT SINCE YOU INTEND TO WRITE THE WORDS "ADMINISTRATIVE OFFSET" INTO THE STATUTES, YOU OUGHT TO SATISFY YOURSELVES THAT YOU UNDERSTAND THE FULL IMPLICATIONS OF YOUR ACTIONS UPON THIS CASE.

I BELIEVE THIS BILL CAN BE AMENDED TO AVOID THE IMPLICATIONS OF AUTHORIZING OR EVEN RECOGNIZING THIS POWER WHILE STILL ACCOMPLISHING THE GOAL OF INCREASING THE PROFICIENCY OF THE THE FEDERAL GOVERNMENT IN THE COLLECTION OF LEGAL DEBTS.

Mr. HALL. Thank you, Ms. Deatherage, for your testimony.

What would be the effect of administrative offsets on the budget and appropriations process of the State of Oklahoma?

Ms. DEATHERAGE. Well, I think that one of the things that concerns me is I am not exactly sure how that would be implemented. We have very specific budgeting procedures in Oklahoma that prohibit the transfer of funds from one agency to another.

In other words, we cannot transfer highway funds to the department of mental health. I mean, it requires—an agency cannot do that. Each agency is required to present to the State budget office a work program detailing how funds are going to be spent, and that includes Federal funds.

And they are not allowed, no one has the authority in the State of Oklahoma, including the Governor or—our emergency budget board, which is the contingency review board, has no authority to transfer funds from one agency to another; that it can only be done by State legislation and by State appropriations, and insofar as Federal funds are concerned, there is a very—that is a real gray area, because we don't appropriate Federal funds. Those come directly to the State agencies.

And there is some legal question based on some court decision in our State in the last year as to whether or not as to who has authority over those Federal funds once they come directly from the executive branch in Washington to the executive agencies in Oklahoma.

Mr. HALL. So, is it your opinion that if money is sent by the Federal Government to the State of Oklahoma, to the highway fund, for instance, and that money is misappropriated in some way, lawfully or unlawfully, and that later, moneys are sent by the Federal Government to the mental health fund of the State of Oklahoma, at a time subsequent to the misappropriation of the highway funds.

Is it your opinion that under the present law, or 4614, that the Federal Government would not have the right to offset that money, and then take it out of the mental health fund?

Ms. DEATHERAGE. Well, I think one of the things that concerns us is that from some of the testimony and things that we have been able to decipher, that you would in fact have that by implication, but it is not clearly stated here.

And we are concerned about some problems that that might raise for budgeting in the various States and localities. So we are not saying that you wouldn't have it, but we are saying that if, in fact, that is what you intend, then you should say that, and we should be able to work with you on how that is said. That is mainly what we are trying to say, that it is very vague.

Mr. HALL. On page 5 in your second statement—beginning with the word, "secondly," you urge the clarification and state the legal distinction between Federal claims and Federal debts. Now, what procedure would you suggest that be used to make that distinction?

Ms. DEATHERAGE. I would call to your attention that the General Accounting Office has prepared a report having to do with the fact that Federal agencies have been, in their opinion, somewhat remiss in their collection of debts from Federal audit findings, and there are a number of suggestions in there about the poor accounting practices of the Federal agencies, and about the fact that they do

not have timely and expeditious procedures for follow through after audit findings.

And all we are suggesting is that there ought to be a clear procedure for Federal audit findings, for an ability of the grantee to dispute any audit findings that they may find objectionable, and I know that those are always the case.

And then some administrative procedure for finalizing that, so that then the States or the grantees have an opportunity to then adjudicate further in the courts, which ultimately has to be made available.

Now, I think we would have to spend some time discussing at which point penalties and interest can begin to accrue and be assessed. But I certainly don't think that simply the audit finding itself should be the point at which penalties and interest can begin to be assessed, because it is just automatically assumed that the finding is correct. They are not always correct.

Mr. HALL. Well, as I understand your testimony, you are supportive of the H.R. 4614 with some of the clarifications being made that you have outlined in your testimony.

Ms. DEATHERAGE. I would certainly not support it in its present form. I don't think that we could support it unless there were serious revisions made, because it raises more questions in our minds than it answers, but we would be more than happy to work with the subcommittee in trying to develop procedures to try to make it more palatable.

Let me say this, though: I do think that there are a number of issues that we need to look at, and it may not be possible in this legislation. I don't know how you all write legislation, and so it is up to you to figure out where the appropriate place is, but there are some real needs for clearing up that procedure at the end of the audit, between the end of the audit, and trying to collect any what may be perceived to be debts.

And that is a very great area. And we just think that you ought to leapfrog from the audit over to a debt without figuring out what is in between. And there is no procedures spelled out anywhere for that right now.

Mr. HALL. But you are not taking the position that the Federal Government——

Ms. DEATHERAGE. That we would always be opposed to——

Mr. HALL [continuing]. Should not have the right, if there has been some deficiency in some fund that has been given to a State, that it should not have the right to take that money out of some other funds that may be coming to the State, if it has been a legitimate decision made that there was some sort of impropriety and maybe another fund that money went to from the Federal Government.

Ms. DEATHERAGE. I would not, in principle, oppose that. But I would certainly—it would certainly be necessary in my mind for us to try to develop procedures, and establish fair and reasonable procedure for implementing any such procedure.

Mr. HALL. I assume that you take the position now that the Federal Government does not have the common law right, as it has raised in the Supreme Court case, to administratively offset from one fund to another?

Ms. DEATHERAGE. Yes; that would be the position of the National Conference of State Legislatures.

Mr. HALL. Thank you. I yield to the gentleman from Oklahoma, Mr. Synar.

Mr. SYNAR. Thank you, Mr. Chairman.

Mr. Chairman, when a claim becomes a debt——

Ms. DEATHERAGE. Well, that is our question. There is nothing spelled out in this legislation or, to our knowledge, at this point in time, the only authority really given for that is for the Federal agency itself, the executive branch agency that has been the original contracting agency with the State and local government.

And that is a unilateral authority conferred on that particular agency to act as judge and jury, and then collection agency. And we don't think that that is fair.

Mr. SYNAR. Am I correct; the way the procedure works in most agencies is they work with the executive branch of the Federal agency down to the State level? Is that the Federal Government provides the money, and also does the audit, with the States having the major responsibility of implementation, but even more important, to enforce the rules and regulations as mandated from here. Correct?

Ms. DEATHERAGE. Yes. That is basically the way it works.

Mr. SYNAR. I know the way it works on SSI. The State of Oklahoma, through the county welfare office, is in charge of enforcing the eligibility rules and regulations violations.

Ms. DEATHERAGE. Right.

Mr. SYNAR. Yet, most of the money comes from the Federal Government——

Ms. DEATHERAGE. That is why our administrative overhead has grown so much faster over the last 20 years than the Federal Government's.

Mr. SYNAR. That is correct. I wish more people knew that.

Ms. DEATHERAGE. I am glad they don't.

Mr. SYNAR. Does the State of Oklahoma, or do other States have a process of their own audit to where what you are saying is that there may be two separate audits, the Federal audits may say one thing, and State auditors may say another?

Ms. DEATHERAGE. Well, you raise an interesting point. We audit, but we only audit in compliance with State statute and regulation. We do not audit for compliance with Federal statute and regulation. So that there is the possibility that there may be conflicting State and Federal statutes and procedures, and always, what we have—we have yielded to the Federal, in terms of preemption, and if State agencies are receiving Federal funds, then we assume that they are complying with Federal regulations and the rules.

But there may be problems. There may, in fact, be problems with some conflict in that area. But we do not audit specifically for those things. We audit for compliance with State law.

Mr. SYNAR. Let me take another track.

As you know, we are on a fiscal year beginning in October. As you all on the same fiscal year?

Ms. DEATHERAGE. No.

Mr. SYNAR. Where do you all start?

Ms. DEATHERAGE. We start July 1. We run July 1 to June 30, and every State is different. Most States are on July 1 to June 30, fiscal year. Some States are on—moved their fiscal year to coincide with the Federal. Most of us did not.

Mr. SYNAR. Is most contracting for services, let's say, out of the highway department or water and sewage, done immediately after July 1? Is this usually when the bids are let in Oklahoma?

Ms. DEATHERAGE. Well, the highway department is a little bit different, because their finds are not subject to fiscal year limitations. But other agencies contract immediately on a fiscal year basis. And that does raise some problems for us, because in trying to determine Federal dollars, and trying to budget for Federal dollars, we have to use five quarters when we are dealing with each fiscal year, because we have to take into account our four quarters, and then the next quarter of the Federal fiscal year.

And it is very confusing.

Mr. SYNAR. In other words, a lot of times, what was required is that after the October deadline comes, if we pass the second budget resolution, it is only then that we know how much money will be available to the agencies.

Ms. DEATHERAGE. Actually, we never know how much money is going to be available. We spent the last year trying to decipher what you did to us last year, and we are just guessing. And we think in Oklahoma we have done a better job than most States.

Mr. Masanz told me yesterday that Oklahoma—because I can come within $30 million, we think, then he thinks that we have done a real good job. And that is very difficult for us to determine, because you budget so differently than we do. We have to have a starting place and a stopping place. We can't have continuing resolutions, and it is very difficult.

Mr. SYNAR. Or deficits.

Ms. DEATHERAGE. Or deficits. And it is very difficult for us to try to—it is impossible for us to predict Federal funding levels. We just finished our budget day before yesterday for fiscal year 1983, and the only thing we know for sure about Federal funding levels, is that we don't know what they are.

Mr. SYNAR. Let me ask a question. The reason I was trying to get into this—let's take, for example, you all have already passed the July 1 mark. The contracts are being let, highways and water and sewage, and a number of other programs.

If this body fails to enact a clean air bill by December 31 of this year, Oklahoma will be a nonattainment State, in Oklahoma City and Tulsa, of which I am quite confident funds will have already been expended and contracted for in the highway department in water sewage and other areas.

On January 1 of next year, if you are a nonattainment area by the interpretation of the law, you are in violation. Therefore, the Federal Government could have a claim or a debt that funds are being misappropriated, even though they were initially appropriated by the——

Ms. DEATHERAGE. Through no fault of our own.

Mr. SYNAR. Through no fault of your own. How would the State of Oklahoma get those funds back if the agency and the Federal Government demanded payment of the debt. How would you—

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what is the process Oklahoma would use if they are noncompliant, and therefore, a claim now becomes a debt?

Ms. DEATHERAGE. Well, that would be a terrible crisis for us. I am sorry you mentioned that, Mr. Synar, because a part of the problem depends on which of the agencies we are talking about.

If we are talking about the municipalities of Oklahoma City or Tulsa, that raises a very different problem, because we do not appropriate funds directly to municipalities in Oklahoma. Our State funds are State funds, and they raise and generate their own money locally.

And we have had very few instances where we have appropriated funds for municipal programs. So, that would be a serious problem. Not to say that they would not come to us, because local governments are turning to State legislatures to try to make up deficiencies in funding as a result of Federal budget cuts.

For State agencies, they would probably come in and ask for an emergency supplemental appropriation to insure that the contracts would not be rendered void.

Mr. SYNAR. And then taking the money that the Federal put into the contract, give it back, what was left.

Ms. DEATHERAGE. And then probably we would sue to try to recover the—depending on how much money it is, then we would probably end up in court to try to recover it.

Mr. SYNAR. Is that your understanding on how the process would work in other States?

Ms. DEATHERAGE. Well, every State is different. All the budget laws are different, and some States operate on biannual budgets, and so one of the things that we are concerned about is the impact of this broad legislation as it affects individual budget laws and restrictions of the various States.

And every State is very different.

Mr. SYNAR. And what you are saying—in one final question, Mr. Chairman—what you are saying—let's say that does occur on January 1 under the present understanding that you have, is that all funds in mental health or any funds that would be coming through the channel after January 1, from the Federal Government, would be offset for highways and other funds that are presently being used that have now been determined dead.

Therefore, it would throw a monkey wrench in the programs which really weren't related to any type of misauditing, misappropriations. It is your concern that we need to clarify very clearly, or at least direct the States to set down very clearly what their rules will be in a case like that.

Ms. DEATHERAGE. Yes, and I think that is a worst-case scenario, but it is certainly possibly, and that is what lawsuits are made of, are worst-case scenarios.

Mr. SYNAR. Thank you, Mr. Chairman.

Ms. DEATHERAGE. Thank you.

Mr. HALL. Mr. Kindness, the gentleman from Ohio, is recognized.

Mr. KINDNESS. Thank you, Mr. Chairman.

I feel as though I have walked into the wrong room.

Ms. DEATHERAGE. So do I. We don't think that this bill should apply to us.

Mr. KINDNESS. Well, that is where I am coming from. And I didn't think you did.

Ms. DEATHERAGE. Oh, good. Could you get that in the record, please?

Mr. KINDNESS. And I think we need to get the record clarified at this point, and concerning that point. Individual is not defined in this legislation. It is, I think, in title V, where——

Mr. SHATTUCK. Title V, uses the term "person," does not use the term "individual."

Mr. KINDNESS. And the term, "individual," then, is not a term of art.

Ms. POTTS. That is correct, although at the last hearing, the Office of Management and Budget testified that it was their intent to include individual—excuse me, States and local government.

Mr. KINDNESS. I am sorry I missed their testimony.

I do apologize, Mr. Chairman, that I wasn't present at that time.

Mr. HALL. That is all right, Mr. Kindness.

Mr. KINDNESS. So it isn't that I walked into the wrong room, I walked in on the wrong day. I certainly think that the points that have been made here this morning are quite important and pertinent, if that interpretation would be applied to the term "individual," and I certainly hope that we in markup may deal with that point very carefully.

I think you covered very well a number of the concerns that would be raised by applying this legislation to State and local governments, but I am sure there are many others we haven't really thought about.

Coming from local government, and having worked a little bit with State government, I have a great deal of sympathy for the State and local governments that have things imposed upon them by the Congress, and of course the State governments also impose things on local governments that are just about as difficult.

But while we are in this area, I would like to inquire whether you have any comments or would wish to submit any further information concerning how the State of Oklahoma deals with parallel matters, vis-a-vis local governments and municipalities, and I think that there probably are relationships between the two, State government and county governments, of a parallel nature.

Would you care to comment in that area.

Ms. DEATHERAGE. Well, it is a concern that our local governments have in feeling that perhaps sometimes we—in fact, the worst thing that they can say to us is that we are acting like Congress, and that we are doing this to them that—no offense, but that we do things to them——

Mr. KINDNESS. That is why I ran for Congress in the first place.

Ms. DEATHERAGE [continuing]. Because they do feel that many times we impose things on them without full and appropriate hearing. We do not have some of the problems in Oklahoma that may exist in other States where the funding sources or functions at the local levels of county and city levels, are more directly tied to State funding.

As I mentioned, we do not fund directly services provided by the cities, but we do fund—we have over the last several years, because our counties have been in serious financial trouble—we have start-

ed—and the State has been in relatively better financial condition—we have started to assume some of the responsibilities at the State level.

So we are making an effort, though, to try to be more sensitive, I think, to the issue that local governments need to be able to operate with some planning, some degree of knowledge, and certainly in advance of what State requirements are going to be.

I suppose the biggest area of concern that we have in this whole, with regard to this issue, is with regard to the issue of schools, and the issue of local control versus whether the legislature is acting as a super school board, and we tend, in the legislature, too often I believe, to set requirements for local schools that ought properly to belong in the purview of local school boards.

Unfortunately, our local school system sometimes comes and expects us to make decisions that are too controversial for them to make, and we too often agree to do it.

Mr. KINDNESS. Sounds a little bit like Ohio.

Ms. DEATHERAGE. It is familiar, yes, I am sure.

Mr. KINDNESS. Thank you very much.

Ms. DEATHERAGE. Thank you.

Mr. KINDNESS. You are back, Mr. Chairman.

Mr. HALL. Thank you very much for your testimony, Ms. Deatherage, and we will certainly take it into consideration.

Ms. DEATHERAGE. Thank you for the opportunity to appear here. And we will be glad to work with the subcommittee in any way that we can be of assistance.

Mr. HALL. Thank you.

Our next witness will be Richard Hastings, Director of the Division of Certification and Program Review in the Department of Education.

Mr. Hastings, we welcome you to this hearing.

TESTIMONY OF RICHARD HASTINGS, DIRECTOR, OFFICE OF STUDENT FINANCIAL ASSISTANCE (MANAGEMENT SERVICES), DEPARTMENT OF EDUCATION

Mr. HASTINGS. Thank you, Mr. Chairman. As you will note, I have been kicked upstairs recently, so I am now the director of the office of student financial assistance for management services.

I will just summarize this short statement that we have. Basically, the Department of Education likes the provisions of 4614. We would prefer to see the Congress enact S. 1249, which the Senate has been working on now for some time, which contains many of these same provisions and some others as well, which we believe would significantly assist us in debt collection.

Just a word of background. The Office of Student Financial Assistance is responsible for about 96 percent of the delinquent debt in the Department of Education, and about 97 percent of all the audits in the Department of Education are audits of student financial assistance programs at the some-6,000 schools that participate in these programs.

Of the $3 billion currently outstanding in the Department of delinquent debt, about $600 or $700 million are related to student loans currently in the hands of the Department for collection, and

the remainder of the student loan debt is in the hands of either State guarantee agencies or in the hands of schools that are participants in the national direct student loan program.

Two points I would like to comment on specifically. One is the use of independent contractors for collection services. As you know, we have specific statutory authority to use contractors, and we let three very large contracts last November. Those contracts are located in San Francisco, Chicago, and Atlanta, and have nationwide coverage.

We have about 300,000 loans with a face value of almost $500 million currently placed with those collection agencies. And in the first 5 months of activity on those contracts, those contractors have collected over $5 million to date.

I expect that the Office of Student Financial Assistance will probably show an increase in our collections on defaulted student loans of somewhere in the neighborhood of 25 percent for this fiscal year, part of which, certainly, is attributable to new procedures, but a great part of it also attributable to the use of contractors.

We have had no significant complaints from delinquent borrowers. We do get lots of letters about the fact that we are using collection agencies, and people don't like the fact that somebody has finally found them and asked them to pay their legitimate obligations, but we have had no significant letters alleging abuse or violations of Federal statute.

The other point—and this is really just an aside—but one of the things that I am responsible for supervising in the Office of Student Financial Assistance is the resolution of all of those audits. Our regulations require that all schools be audited at least once every 2 years, so we get about 3,000 audits a year on schools, many of which are, of course, public institutions, and are entities of State governments.

I would just say that we have very effectively used at least the threat of offset on previous occasions in order to get public institutions to repay what we believe were just claims.

So, I think we would be very interested in any changes the Congress proposes to make in that area.

I would be glad to answer any questions you might have at this point, Mr. Chairman.

[The statement of Mr. Hastings follows:]

Statement of

Richard A. Haatings

Director, OSFA
(Management Services)

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for thia opportunity to be heard on H.R. 4614.

In summary, the Department of Education welcomes any added tools which will aid us in our continuing efforts to collect the $3 billion currently ontstanding in delinquent debt.

This measure does provide some useful statutory additions which would help ua to become more current in the collection of Federal receivablea.

We would urge the Congress to enact S. 1249, the "Debt Collection Act of 1981", which the Administration believes would more comprehensively address current gapa in applicable law.

In order to help the Subcommittee in ita deliberation, however, we are providing specific comments on the provisions of H.R. 4614.

PROTECTION OF FEDERAL COLLECTORS

This provision would be most helpful in providing further protection to collectors who must make personal visits in the collection of loans. It would also be useful even in those caaes where contact is primarily by telephone, since it is not inconceivable that an unhappy debtor might attempt to gain entry to the collector's place of business and threaten his safety. We aupport this provision.

CLARIFICATION TO THE STATUTE OF LIMITATIONS FOR ADMINISTRATIVE OFFSET

Providing government agencies wit'. the ability to collect, by administrative offset, a debt owed by Federal employeea to the Federal government beyond the

statute of limitations mandate of six yeara is a limited but welcome addition. We welcome this limited addition since many of the National Defenae/Direct loana which are now in Federal hands for collection are older than aix yeara.

INTEREST AND PENALTY ON INDEBTEDNESS TO THE UNITED STATES

We especially welcome this general authority to impose interest and penalty payments on delinquent debt.

We are not entirely clear aa to whether the collection of atudent loans would be covered under thia provision, since the interest rate on these loans is a matter of contract, and would welcome clarification of the Congresa'a intention.

SERVICE OF SUMMONS

At a recent conference on the collection of Federal debt we became aware that some U. S. Attorneya are already experiencing problems with service of summons as a result of decreased availability of marshalls. In fact, we have been asked to provide funds to the U. S. Attorney's office in Baltimore in order that his office can pay $20 or $25 per service to private procesa aerving agencies.

We believe that this amendment to the statutea would greatly expedite the judicial procesa and increaae our collectiona. Accordingly, we would welcome its adoption.

CONTRACTS FOR COLLECTION SERVICES

As the Committee knows, the Department of Education has specific authority to use private collection agencies. After a two-year pilot period, the Department awarded three contracts in November of 1981 and implemented them in January of 1982 for the collection of over $1 billion in student loans.

We currently have placed 306,422 loans with a face value of $463.6 million with these contractora. These contractors have collected $5.1 million to date. We have experienced no aignificant complaints from debtors.

The availability of this option to all Federal agencies would be most welcome. Thank you for the opportunity to be heard on this measure. I would be most pleased to answer any questions which the Committee might have at this time.

Mr. HALL. You state in your summary, or testimony, that there is $3 billion currently outstanding in delinquent debt.

Mr. HASTINGS. Yes, sir, in the Department.

Mr. HALL. When you say delinquent, how much over 90 days is that? What do you call a delinquent debt? When does it become delinquent?

Mr. HASTINGS. I can't speak for the entire Department on it, as that represents debt which is not just in the Office of Student Financial Assistance. It includes primarily those pieces which are not student financial assistance related, such things as higher education facilities loans, or dormitory loans at institutions. Those are the other two major components.

So far as the student financial assistance programs are concerned, a loan is delinquent within 60 days, I believe, after payment is supposed to have been made, and goes into default 120 days after payment is due.

Mr. HALL. So, what policy does the Department use now when a debt is 120 days overdue, with reference to trying to enforce collection of that indebtedness?

Mr. HASTINGS. It depends on who has the responsibility for collection. The national direct student loan program, as you know, is the old National Defense Education Act loan program, which has been around since 1958, and is a revolving fund at institutions with the Federal Government providing an annual influx of capital, which the institutions then use to make loans.

Schools decide who the recipients are under Federal statute, and they also have the responsibility for collection of those loans.

For far too many years, institutions were either unwilling or incapable, in some cases, of assuming the collection responsibility which they had by statute, and the Department ultimately published regulations requiring due diligence on the part of institutions.

More recently, we have allowed institutions to turn over some portion of those defaulted loans to the Federal Government directly for us to collect. We have only about 25 percent of the defaulted loans in the national direct student loan program, however.

Mr. HALL. Who has the other 75 percent?

Mr. HASTINGS. The institutions do. They have about——

Mr. HALL. Is there any supervision by the Department on these institutions to collect those defaulted loans?

Mr. HASTINGS. Yes, sir. As a matter of fact——

Mr. HALL. What do you do?

Mr. HASTINGS. We have several vehicles. First of all, with respect to the default rate at the institution, this year, the Department issued a new procedure in the allocation of newly appropriated funds for Federal capital contribution to the national direct student loan funds, and institutions which had default rates in excess of 25 percent received no new Federal capital contribution.

Institutions which had default rates between 10 percent and 25 percent were penalized on a pro rata basis, depending on the severity of their default rate. That is point one.

Point two: We have a series of ongoing program reviews conducted by our 10 regional offices around the country. We select institutions to be reviewed on the basis of indicators of probable manage-

ment problems, one of those being the default rate in the national direct student loan program.

Mr. HALL. That is not what I have in mind. My question is, if you have a school with a 25-percent default, you say there is no more money given to that school as long as that default rate is in that area?

Mr. HASTINGS. That is correct.

Mr. HALL. What do you do about trying to collect that 25 percent?

Mr. HASTINGS. Well, I am getting to that.

We have, as I say, right now, we have direct Federal responsibility for collecting only about one-fourth of the entire portfolio. The institutions have the responsibility for collecting that.

One of the problems we have is that we have some questions about recycling the money, whether the money when collected would go back to the Treasury, or whether it could then be available for——

Mr. HALL. I am not concerned with that, Mr. Hastings. My question is, what affirmative action do you take to collect that money that is not paid? Let's take the particular school that owes you, that is 25 percent delinquent.

Mr. HASTINGS. Yes, sir.

Mr. HALL. Let's say that that school owes you $350,000.

Mr. HASTINGS. Right.

Mr. HALL. What does the Department do to collect that $350,000? I know you don't pay them any more money while they are delinquent.

Mr. HASTINGS. Right.

Mr. HALL. What do you to collect it? What steps do you take? One, two, three.

Mr. HASTINGS. First of all, the institution does not owe the Federal Government the money. The student owes the fund at the institution the money. There is a matching provision in the national direct student loan program. That money is 90 percent—originally, it is 90 percent Federal capital, which is matched by 10 percent institutional——

Mr. HALL. Whose responsibility is it to collect the delinquent amount?

Mr. HASTINGS. The institution.

Mr. HALL. All right. Is there any obligation on the Government to assist that institution in collecting that money?

Mr. HASTINGS. We have attempted to assist institutions in several ways. One of them is by using the stick which I just mentioned a minute ago, which is a fairly severe penalty, as we can well testify, given the public comment we have had on that procedure this year. Because it seriously impairs the cash flow of some institutions.

Second, we published a series of regs in 1976 concerning due diligence required in the collection of these loans, and we have conducted in conjunction with the National Association of College and University Business Officers, and the National Association of Student Financial Aid Administrators, a series of workshops around the country on how to collect these loans.

Third, we have encouraged institutions to use private collection agencies when they are incapable of collecting the loans them-

selves. We also are looking at the question of whether or not it is in the interest of both the Federal Government and the students and the schools involved to develop new procedures to have more of those loans come to the Federal Government for collection, either directly through the employees we have in our regional offices, or through the use of our contracts, which we have now let.

We believe that these private collection agencies are a very effective tool in this effort.

Mr. HALL. You say you are talking about new procedures. Do I understand by that that the old procedures are not working.

Mr. HASTINGS. We don't believe that they have been adequate, Mr. Chairman, and that is one of the reasons why we went to the use of private collection agencies. And I think our collection results are showing that.

Mr. HALL. And you say since November 1981, out of $500 million that was owing—where you have the private collectors in Detroit, Chicago, and San Francisco, you collected $5 million since then?

Mr. HASTINGS. The collection agencies began to get those notes at the end of January. They have had about 5 full months of experience now, and they have already collected $5 million in those 5 months.

Mr. HALL. Does the Department have any responsibility at all, statutory responsibility, to mandate that these colleges collect these funds that are owing?

Mr. HASTINGS. I think the answer to that question is yes, Mr. Chairman, we do certainly have an oversight responsibility in that, and the statute does presume that at some point, the Secretary of Education might dissolve those funds, and at that point, the nine-tenths of the fund which originally came from Federal funds would come back to the Federal Government, so that there is certainly a Federal oversight responsibility on that.

Mr. HALL. Does the Department have any requirements for due process in its debt collecting efforts, and do these requirements arise from specific statutes, and would these statutes for a due process requirement be affected by passage of this bill, 4614?

Mr. HASTINGS. Are we discussing student loans?

Mr. HALL. Yes.

Mr. HASTINGS. We have——

Mr. HALL. For any of its debt-collecting efforts, whatever those efforts may be.

Mr. HASTINGS. When we wrote the request for proposal for the collections contract, I was informed at that point that we were not required to observe all the requirements of the Fair Debt Collection Act.

However, we did put in all of the provisions as requirements on our own part. As I said, we have had no complaints about the use of those agencies, and I don't believe that we would have any problems with the bill as it is currently written with respect to due process.

Mr. HALL. Is the $3 billion that is currently outstanding an amount that stays in that general vicinity at all times, because of the magnitude of money that continues to flow into these areas?

Mr. HASTINGS. As a matter of fact, as I recall the figures, I believe the number has increased over the last year. In part——

Mr. HALL. The indebtness——

Mr. HASTINGS. Yes.

Mr. HALL. The delinquency has increased?

Mr. HASTINGS. Yes, sir.

Mr. HALL. By what figure?

Mr. HASTINGS. I can't give you the percentage. I could supply that for the record, but in part, that is——

Mr. HALL. Would you make that a part of the record?

Mr. HASTINGS. Yes, sir, I will provide that.

[The information follows:]

EDUCATION DEPARTMENT—DOLLARS DELINQUENT

[In thousands]

	Fiscal year—			
	1979	1980	1981	[1] 1982
NDSL program	$731,743	$824,495	$896,495	$974,000
GSL program	1,226,369	1,439,554	1,694,095	1,945,000
Other ED programs	220,982	220,982	220,982	220,982
Total delinquent	2,179,094	2,485,031	2,811,782	3,139,982

[1] The above figures represent the total dollars delinquent within the Department of Education. These figures do not take into account dollars collected by the Department on these delinquencies.

EDUCATION DEPARTMENT—DOLLARS COLLECTED

[In thousands]

	Fiscal year—			
	1979	1980	1981	[1] 1982
Dollars delinquent	$2,179,094	$2,485,031	$2,811,782	$3,139,982
Less: Cumulative dollars collected	91,840	134,634	180,822	233,000
Total delinquent due	2,087,254	2,350,397	2,630,960	2,906,982

[1] Fiscal year 1982 figures are estimates.

Mr. HASTINGS. In part, that is due to the nature of the guaranteed loan program, particularly, which as you may know, accelerated like crazy over the last couple of years, and most of that paper is in the hands of State guarantee agencies for collection.

Mr. HALL. Do you have any problem—and you have heard some testimony here today, I am sure, about the administrative offset provision. Do you feel that you have the proper authority to administratively offset one debt against some other area that money has been paid to an agency or to an entity?

Mr. HASTINGS. I am not going to get into the question of legal authority, sir—because I am not an expert on that—but I am aware of the fact that we have, on several occasions, and I would say probably over 100, in my experience, been able to effectively collect the debt either by direct application of the offset in a very few instances, or the threat of such offset in many more instances.

Mr. HALL. Have you had any difficulty in arriving at whether or not a claim is a debt with any of the people that you have dealt with?

Mr. HASTINGS. Well, let me just describe briefly——

Mr. HALL. Would that have been brought up today as a distinction between the two?

Mr. HASTINGS. Yes, sir. Right. And we have had some questions about that, I think, in the past. The schools, typically, are audited by independent Certified Public Accountants. In a very few instances, they are audited directly by our Inspector General's Office.

The IG's Office receives the CPA audits, reviews them for technical competence, then gives them to the program officials for resolution and ultimately for sending out a final demand letter to the audited entity.

We believe that we have afforded more than adequate due process in that the auditor does not work for the Department of Education. He is, in fact, an employee of the institution.

We make the determination as to whether or not to sustain the auditor, and we do not always sustain the auditors, and I think the Department's record is about 50–50, in fact, with respect to items that are sustained.

And then, ultimately, we do provide either for an informal chain-of-command appeal process or, in the case of State grant programs, we have a formalized audit appeal board. One of the problems we have had, though, I must say—and I know that Jim Thomas, our Inspector General, has expressed these concerns repeatedly—is that it is always to the audited entity's benefit to drag the process out as long as possible, because there are no penalties. They are paying no additional interest on the money the State received.

It is always to the audit entity's advantage to appeal, because they are paying no interest on that amount, and some of these things—for instance, in Title I, of elementary and secondary, where there have been rather large audit exceptions that have dragged on for literally years and years, while States have attempted to appeal the process continually.

Mr. HALL. Thank you, Mr. Hastings.

Mr. Kindness of Ohio is recognized.

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. Hastings, I would like to get a little bit better feel of the experience to date and what you are projecting with regard to the collection of the sums that have been turned over to collection agencies, some 306,000-plus loans, $463.6 million, 5 months, about $1 million per month average.

Is that beginning to accelerate? Do you project an acceleration in collections?

Mr. HASTINGS. That is a good question. In fact, we were supposed to have a meeting next week with our three regional administrators who are responsible for collecting those loans to discuss what our goals are going to be for the next fiscal year.

It is difficult to say for certain where the collection agencies are going on that right now. If you look at the experience over the last 5 months you are not going to sustain that kind of rate forever. One of the things obviously that is happening is that you have what is known as creaming going on. They routinely send a letter to every one of these people when they get the loan the first time, to try and recover as much money as possible, as cheaply as possible, since they are working on a commission basis.

At some point, you then really have to start doing the hard work on that, and we do have some very specific requirements that have to be met on each note before it is returned to the Federal Government by the collection agency.

I expect the numbers to go up, although they have been leveling off a little bit over the last 2 months. I would expect, next year, to show an increase, and I think it would probably not be unreasonable to expect something in the same order of magnitude that we have had this year.

Mr. KINDNESS. So that, in all likelihood, at least considering the current economy conditions, you can't really anticipate much acceleration in that rate of collection?

Mr. HASTINGS. Well, one of the problems you have got to keep in mind here is that this is paper which has been worked—if it was a national direct student loan, for instance, and if the institution followed our regulations, they have worked it, they have sent it to a private collection agency. They then turned it over to us. We have worked it for 120 days and/or we have sent it to a private collection agency.

So some of this paper has really been worked to death. And we also have particularly a problem in the national direct student loan program. Some of that paper is really moldy stuff, and we don't have good addresses or social security numbers, things which make it more difficult to collect, certainly.

Mr. KINDNESS. But at the current rate, you would expect, with the groups of loans that have been turned over to the collection agencies, you would expect a decline to start occurring some time not too far——

Mr. HASTINGS. You have got two questions. One is the rate of acceleration, if you will, and the other is the total dollars collected. It is like an annuity insurance policy. You have a $1,000 note, and you start your collection today. You are going to benefit from that for several months, or maybe even a year, depending on the payment plan the borrower has.

And the question is how many more of those people are you going to convert to repayment next month, and the month after that, and the month after that, and those start accumulating and building on themselves. I think the absolute dollar volume certainly is going to go up, simply because of the annuity effect.

Whether or not the acceleration rate will increase at the same rate is something I am uncertain of at the moment.

Mr. KINDNESS. Thank you. Mr. Chairman, I yield back.

Mr. HALL. Thank you, Mr. Kindness. We have a vote on, we will recess here for 10 minutes. When we come back, we will probably go on the 5-minute rule, due to the fact that we have two other persons to testify, and time is becoming a factor.

[Recess.]

Mr. HALL. Our next witness will be Mr. Robert Ford, Deputy Assistant Attorney General, Department of Justice.

Mr. Ford, glad to have you, and you may proceed, please.

TESTIMONY OF ROBERT N. FORD, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF JUSTICE

Mr. FORD. Good morning, Mr. Chairman.

Because the committee has heard a lot of testimony this morning, and is running late, if it is all right with you, Mr. Chairman, I will just waive the reading of my statement, and submit it for the record.

There are a few points that I would like to make. The Department of Justice plays in this arena in a dual role. Our major role is as the Government's debt collector of last resort.

As the gentleman before me testified, it is after these debts have become delinquent, after the agencies have tried to collect them, and send them to debt collection agencies, and nobody succeeds, that we get them.

And we have done a pretty good job so far this year. Just to give you an idea of the magnitude of our collections we started recording cash separately from other kinds of collection activities, such as foreclosures and those things, this year.

And through the month of May of 1982, our U.S. attorneys, who bear the primary brunt for collecting this money for the United States, have collected over $100 million so far this year, in cash.

We think they are doing an exemplary job, and we think that they are doing it because the Attorney General has emphasized it as a priority of his, as well as a priority of this administration.

A couple of things that we think we need as the Government's debt collectors of last resort that we thought were pretty safe, now seem to be in jeopardy. One is the provision for service of judicial process by registered or certified mail. That is included in your bill.

We thought that it was redundant earlier last month, when we discussed it with your staff, because of the proposed amendments to rule 4 of the Federal Rules of Civil Procedure. I understand that a fellow Member of Congress has introduced a piece of legislation—I don't know the bill number, offhand—that would postpone the effective date of the amendments to rule 4, which would provide for service by registered or certified mail, until October 1, 1983.

That is very important to us because without having service by registered or certified mail, it becomes a tremendous burden on the U.S. Marshal Service, and as I am sure all the members of the committee are familiar, the Marshal Service is an overworked organization, and one that has a lot to do transporting prisoners, providing for the safety of judges and other things. By the nature of things, service of process for a student loan default for $2,500, simply cannot be the highest priority that they have.

So the service of process issue is one that is very important to us as collectors of last resort.

A couple of vignettes, if I may give them to you to tell you—give you an example of the things we face. Just last Friday, I was called by a distraught attorney from the Department of Labor. This woman informed me over the phone that they had been trying in vain for months to collect $258,000 from an organization that they had previously funded and determined had used the funds erroneously.

And just by accident, they found out that the HHS Department was about to issue the same organization a check for $400,000 for some other program. They tried to convince the folks at HHS to withhold from the $400,000, $258,000, or at least say to the grantee, "We will not give you the $400,000 until you pay the Department of Labor the $258,000."

However, HHS said, "We have no authority to either withhold, set off your $258,000 against our $400,000, nor do we have any authority not to give them the check when it is due to them."

This is an example of the kind of problem that we see every day, where one part of the Government is trying to collect money from an entity that another part of the Government is about to give money to, or has given money to.

I met with the U.S. attorney for the eastern district of Texas, Bob Wortham, from Beaumont, not too long ago. As a matter of fact, when I was just with him in Minneapolis at a meeting earlier this week, he brought to our attention a provision in the statute, pursuant to which one of the educational grant programs—educational loan programs, probably was a Freudian slip when I said grant, because I don't think we get a lot of them back—under the educational loan program, the Secretary of Education was authorized to guarantee certain Federal loans to students only if there was not a cosigner.

Now, it seemed to him as the person out in the field trying to collect the money, that there certainly should not be a big impediment to trying to get cosigners on these loans. Maybe not have a statutory provision that would require a cosigner in every case, because some folks may not be able to get a cosigner.

But it sure seemed to be backward to have a statute that forbad the Secretary from authorizing an insured loan if there was a cosigner. These are the kinds of situations that we find to be incongruous. They make it very difficult for us to collect.

The one other point that I would like to make is I am not sure, after reading your bill, whether or not agencies, or U.S. attorneys offices as their final collectors, would be permitted, would be relieved of the provisions in the Privacy Act that would permit us to report to credit bureaus that Bob Ford hasn't paid his student loan, so that when Bob Ford goes to get a loan to buy his car, the local credit bureau would inform the lendor that Bob Ford is a bad credit risk.

We think that that would be of tremendous benefit to the agencies in collecting, and to us in collecting, if the debtors knew that there was a deterrent, that is, that their credit rating was going to be affected adversely if they did not pay back the Government what was owed to the Government.

I will be happy to try to answer any questions, Mr. Chairman, that you or the committee members have.

[The statement of Mr. Ford follows:]

Department of Justice

STATEMENT

OF

ROBERT N. FORD
DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION

BEFORE

THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON ADMINISTRATIVE LAW & GOVERNMENTAL RELATIONS
HOUSE OF REPRESENTATIVES

CONCERNING

DEBT COLLECTION EFFORTS

ON

JULY 15, 1982

SUMMARY OF STATEMENT OF
ROBERT N. FORD
DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION
UNITED STATES DEPARTMENT OF JUSTICE

The Department of Justice, is the United States' collector of last resort. Litigation and enforcement of judgments are the ultimate collection weapons. The credibility of the entire collection effort is enhanced by the knowledge that effective litigation and post-judgment remedies will be pursued.

The government, as a lender of money, is different from the private sector. Government financing is frequently provided because commercial credit is not available and to accomplish some social goal. It is not surprising, therefore, that government collections may lag behind those in the private sector.

Paramount to any collection effort is the presence of adequate credit information such as the nature of the debt, its amount, and the location of the debtor. Utilization of such information increases not only the effectiveness of litigation, but the entire process.

The Department of Justice is committed to devoting resources and efforts to deal with collection matters which are referred to us and to provide leadership and guidance to our client agencies. The legislation under consideration by the Subcommittee will enhance and assist these debt collection efforts.

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Mr. Chairman and Members of the Subcommittee:

I appreciate the Subcommittee's invitation to discuss the debt collection activities of the Federal Government as they relate to the Department of Justice. The Attorney General has testified several times himself that collecting money owed the United States by delinquent debtors is a major initiative of this Administration as well as a priority of his for the Department of Justice.

The Department plays a dual role in the debt collection arena. First, we serve our agency clients as collections attorneys. Virtually every Federal agency seeking to reduce its outstanding debts to judgment must refer its delinquent accounts to us.

Our second role is related to the civil and criminal debts owed to the United States directly because of some Department of Justice activity. Criminal fines, antitrust penalties, and civil fraud penalties are examples of this area of our debt collection activities.

Our first role, suing to collect the delinquent debts for our client agencies, is more important than our second in terms of numbers of claims and in dollars of debt due. In addition, for the agencies to be able to carry out an effective pre-litigation debt collection program, there must be a credible threat of litigation to get the recalcitrant debtor's attention. A collection program that cannot rely upon a swift judicial process, followed, if necessary, by attachment of property, garnishment, or other seizures

permitted by law, will adversely affect not only the likelihood of collecting claims referred to Justice for litigation, but also the collection rates by the agencies in their pre-litigation efforts. Debtor's incentives to enter into voluntary repayment plans with creditor agencies diminish drastically where the debtors have reason to believe that no serious collection litigation effort will, or can, be made.

In our second role, mentioned above, our collections activities are more akin to those of other creditor agencies. One major difference, however, is that to the extent that criminal fines are imposed by judges on the basis of calculations unrelated to a debtor's ability to pay, many of the debts we must carry on our books are less realistically collectible than, say, a loan made to someone to buy a home or finance a college education. Furthermore, I understand that at the present time, we cannot compromise or settle criminal fines and therefore they stay on our books as "receivables" until paid or until we learn that the debtor has died.

We play these dual roles in an arena in which estimates are that some $33 billion in debts owed the United States are overdue and in which the President has said that a comprehensive effort will be made to collect this delinquent debt. If the Government is to make a significant reduction in this delinquent debt, our roles are crucial because litigation and the ability to execute and enforce judgments obtained in litigation are the ultimate collection weapons.

The principal statute governing the government's debt collection efforts is the Federal Claims Collection Act, 31 U.S.C. § 951. Under the Act, the Attorney General and the Comptroller General are jointly responsible for prescribing the regulations governing federal agencies in collecting claims owed the United States. One of the purposes of the Act and regulations is to make the government's efforts more comparable to the private sector. Giving agencies the flexibility needed in collecting money, including compromise authority, helps to establish an environment where the referral of a debt to Justice for court action is a last resort, as is true in the private sector.

Included in the standards issued by the Attorney General and the Comptroller General are requirements for written demands informing a debtor of the consequences of failing to pay a debt. 4 CFR 102.2. Also set forth are provisions for the administrative offset of a debt against accrued compensation. 4 CFR 102.3. Guidance is given in the compromising of claims and in the determination to terminate collection activity, 4 CFR 103 and 104. Standards for referring the matter to the Department for litigation are found in 4 CFR 105. Overall, the regulations stress that the conduct of the litigation resulting from uncollected debts, although significant, is but part of the wider effort needed to ensure that the government is repaid monies it has advanced.

While much can be learned from the private sector, it is important to realize that the collection of monies owed the government is much more difficult than debt collection in the

private sector. For example, government agencies are typically lenders of last resort. In making or guaranteeing loans, government agencies are not intended to be in competition with private commercial lenders. Typically, government financing is provided only because commercial credit would ordinarily not be available. Accordingly, even under the most efficient system, government collections may be expected to lag behind efforts in the private sector.

Similarly, until recently, the collection of monies in many areas has not historically been given a high priority in government. There were incentives to disburse monies via agency programs, but not to collect previously advanced funds. Little attention was devoted to screening a particular borrower in terms of his ability to repay, maintaining adequate records concerning the loan, keeping track of the whereabouts of the debtor, and instituting prompt and appropriate action when default did occur. Under such circumstances, one can understand the difficulties which arise when these debts are now sought to be collected.

As I mentioned previously, the Department of Justice is the government's collector of last resort. Under the Federal Claims Collections Standards, claims are to be referred to the Department of Justice, and its United States Attorneys, only after vigorous and exhaustive collective efforts by the relevant agency have proven to be fruitless. By the very nature of the process, the probability of collecting a debt decreases with the age of the indebtedness. Institution of litigation therefore is the culmination of efforts which have previously failed to produce adequate results.

The efforts which can improve the results of collection litigation include those which will improve the overall effectiveness of the system and lessen the likelihood that a matter will have to be referred for court action. Vital to these endeavors is accurate credit data concerning the debtor, including the nature of the debt, its amount, supporting documentation and the debtor's ability to repay the debt. Just as important, if not more so, is an accurate address for the debtor. Finally, since claims do not improve with age, it is important that action be commenced within a reasonable period after default.

To a large degree, the Department depends upon its clients, the departments and agencies, for the foregoing information. Sufficient and accurate information permits the Department to make the informed decision necessary to determine whether to institute litigation. To evaluate the debtor's ability to pay, and therefore whether it is worth devoting resources to pursue the debt also permits a fair determination as to whether the debt should be compromised or whether a payment plan is a viable alternative. Finally, such information provides the Department with the ability to enforce a judgment against the debtor. While such information is essential to successful litigation by the Justice Department, its greatest use is to the agencies which are owed the money. Not only does such information make for a more reasoned decision as to whether to even lend money, it also permits an agency to be a better collector of its funds when borrowers go into default. The most effective means to col-

lect a debt is to collect it prior to litigation. When an agency makes an informed decision to recommend a matter for litigation, the likelihood is that there will be less of a need for litigation. The validity of the debt, the location of the debtor and his or her assets will be determined. Where these factors are present, the necessity to institute legal action is significantly lessened.

To proceed without adequate credit information is ineffective and an inefficient utilization of resources. While a judgment against a defendant, if located, may be readily obtainable, the debtor may be judgment proof. With the range of state garnishment statutes, post judgment enforcement becomes difficult, if not impossible, without adequate information.

While the Department is dependent upon its clients for the necessary information, we are cognizant of our responsibility for leadership and guidance as to what is needed. We are devoting resources and efforts to meet this obligation. For example, we have conducted a forum with several agencies to formulate a standardized system of referring cases for litigation. We have also met with agencies who have experienced particularly high default rates in specific regions, to devise ways to push such cases expeditiously into the system so as to deter others who might receive an impression of laxity on the part of the government.

We also recognize that the Department and its U.S. Attorneys must be equipped to deal with collection matters referred for possible litigation. We have recently conducted several training sessions throughout the country with an emphasis on the clerical

and procedural tasks in debt collection. A bonus incentive plan for those in collection work is also being implemented. A standardized manual for use throughout all the judicial districts is being prepared. Finally, an accurate docket and reporting system to monitor not only a particular case, but also the entire system, is being implemented.

The legislation under consideration by the Subcommittee will facilitate improved collection procedures by the government. It has the support of the Department of Justice. In addition to reasserting the serious concern that the Congress and Administration share with respect to collecting the debts owed to the United States, it will in a practical sense permit a more efficient and effective system.

This completes my prepared statement Mr. Chairman. I would be pleased to respond to any questions you or the other members of the Subcommittee may have.

Mr. HALL. Thank you, Mr. Ford.

I would like to know the solution that came about in this $250,000 offset against the $400,000 that was being paid, was any solution arrived at in that deal that you mentioned earlier?

Mr. FORD. I had talked to the labor attorney about that Friday. I told her I did not, as a lawyer at the Department of Justice, have a legal solution for her. As a matter of fact, I had to leave Monday to meet with the U.S. attorneys—Sunday, as a matter of fact, to meet with the U.S. attorneys in Minneapolis.

I don't know the end of that yet, but my personal advice to her was try to convince HHS to withhold it, and let them sue us. At least then, we've got the money. I tend to think of these things perhaps as a lawyer would from a practical solution, maybe that is not the ideal solution, but I always believe if you and I have a dispute about money, and I have got it in my hand, then I am in better shape than you are.

Mr. HALL. Mr. Ford, do interest and penalties presently accrue on criminal fines, or antitrust penalties, and civil fraud penalties?

Mr. FORD. Not on criminal fines, I don't believe, Mr. Chairman. But they do, pursuant to the civil fraud statutes. The statute itself imposes certain penalties. There are treble damage penalties in certain civil fraud situations. There are also treble damage penalties in certain antitrust situations.

And I think we would have to look at the specific statutes under which we would be bringing the collection action——

Mr. HALL. Would any of those areas, antitrust penalties and so forth, be affected by the provisions on interest, administrative costs, and penalties contained in section 4 of 4614?

Mr. FORD. I am not sure, sir. If the provision of this statute was "notwithstanding any other provision of law," I would suspect that it probably would. I haven't looked back at the other individual statutes, Mr. Chairman, to compare them.

We would be happy to try to do that for you if it would be of assistance to the committee.

Mr. HALL. If you would.

What is the opinion of the Justice Department on the fact that H.R. 4614 places no statute of limitations on administrative offsets?

Mr. FORD. The Justice Department took the position when we wrote to the Office of Management and Budget, that litigation at some time ought to come to an end. So I think it was the official position of the Department of Justice that there should be a statute of limitations, an end to the period of time during which the Government could seek to collect money by litigation.

I don't believe that the Department has taken a position adverse to the administrative offset provision.

Mr. HALL. Has any time been agreed upon or suggested?

Mr. FORD. There is——

Mr. HALL. As to the statute of limitations on these matters, offsets?

Mr. FORD. The administrative offsets?

Mr. HALL. Yes.

Mr. FORD. Not to my knowledge, sir. There is, I am sure you know, the 6-year statute of limitations on litigation.

Mr. HALL. What is a "claim?" What is a claim under the Federal Claims Collections Act? Is it the same as a debt? If so, what is a debt?

Mr. FORD. Well, I suppose from a legal definition, we could certainly agree that a debt—once a claim was reduced to judgment, to final judgment, it would become a debt. As one of your counsel and I were discussing during one of the breaks, while you gentlemen were voting, it seems to be that a debt is what I say you owe me, and a claim is what you call that which I assert against you.

But, certainly, at the point when it was reduced to judgment, it would become a debt. I am not sure that there is clear law as to when a claim becomes a debt, other than after judgment.

We refer to them in the U.S. Attorney's Office as prejudgment claims and then judgment debts for purposes of our collection operations.

Mr. HALL. Section 3 of H.R. 4614 states that the United States, are an officer, or agency thereof, may use administrative offsets. Does this mean that offsets could be imposed on a program other than the one where the claim arose? And would one agency be able to offset the claims of another agency?

Mr. FORD. There doesn't seem to be any limitation in the language that you read, Mr. Chairman, that would prevent one agency from offsetting against another agency, or one agency from offsetting against different claims within its own agency.

Under the present statute, and the Federal Claims Collection Act, I believe the agencies have authority to make administrative offsets in certain situations within their own agencies.

We can, for example, as I understand it, make an administrative offset against a Federal employee, not on his or her salary, we

would like to have that, we would like to be able to get the salary and wages, but we can make it against the portion of the money that the employee has paid into the retirement fund.

Mr. HALL. I yield to Mr. Kindness from Ohio.

Mr. KINDNESS. Thank you, Mr. Chairman. Thank you, Mr. Ford. I don't have any questions. I appreciate your testimony today. I yield back.

Mr. HALL. Thank you. We have another vote on. Ms. Steinberg, we will get to you in just a minute.

[Recess.]

Mr. HALL. Our last witness today is Ann Steinberg, attorney, which we would be happy to have you come forward, please.

TESTIMONY OF ANN STEINBERG, ATTORNEY, BOASBERG, KLORES, FELDESMAN & TUCKER

Ms. STEINBERG. Thank you, Mr. Chairman.

It is truly an honor and enjoyable privilege for me to be here today. I am a member of a Washington law firm by the name of Boasberg, Klores, Feldesman & Tucker, and author of a report to the Administrative Conference of the United States, a report on Federal grant dispute resolution.

I have been invited here today to testify on the possible effects of H.R. 4614 on the Government's collection of debts arising from Federal grants. The views that I express are mine alone.

At the outset, I would like to make clear that the testimony that I am prepared to give relates primarily to the type of grant awarded to State and local governments and other organizational recipients. I am not addressing myself to the type of income maintenance benefits that were discussed at the beginning of the morning by Ms. Sweeney.

In the interest of time, I, too, would like to simply submit the rest of my prepared statement for the record, and raise, instead, a few of the points that were addressed this morning by others.

First and foremost, I would like to endorse the comments of Representative Cleta Deatherage from Oklahoma, in her, I thought, very effective statement that the provisions of the bill before us, while they may be laudable in many respects, simply does not address the complexities and the subtleties of the issues of debt collection as they relate to State and local governments and other organizational recipients of Federal grants.

I am in no way suggesting that these entities should be immune from debt liability or should be able to escape the responsibility that arises when, in fact, the Federal Government determines that these entities owe money to the Federal Government.

But I am suggesting, though, is that in such situations, there are a series of considerations which must be factored in, and a series of procedures which should be guaranteed before any of the steps suggested in the present bill apply.

The two overriding considerations of which I speak are, No. 1, legal due process, and No. 2, the fact that there be final agency action before an agency take remedial measures.

Both of these concerns relate, obviously then, to the question of timing with respect to administrative offset and with respect to the

imposition of interest against debts. In this respect, I must start out by noting a bit of surprise or chagrin at the former testimony of the Department of Education official.

He made two points which I would like to contest directly. First, he made the point that his agency has been long on record in stating that grantees in the situation of owing debts are being given, and are entitled, to full due process.

His representation to the subcommittee that, in fact, his agency is doing more than that which is required by due process. Well, I would like to believe that his entire agency would stand by that statement and must report to the subcommittee that attorneys for his Department have stood up in court and argued quite the contrary, that in fact, grantees are not entitled to due process, and that such procedures are not necessary for debt collection procedures.

In this regard, I would not that there are attorneys present at this hearing who have represented the Commonwealth of Pennsylvania in protracted litigation against the Department of Education, and I am sure would be happy to discuss the cases and the posture of the Department with respect to that litigation.

The second point in the testimony of the Department of Education official which I would like to issue, was his remark that the appeal process which exists caused great concern in the Department because, in fact, it was in every grantee's interest to appeal and to drag out the procedures.

The Department of Education stands alone, to a certain extent, in its delays in the administrative appeal process which is part of their audit and debt resolution process currently with respect to grants to State and local governments.

They have been chided by both the Congress and by other administrative agencies because of the delay. Well, I am not here to tell you that no grantee has ever purposively delayed appeal procedures. I am here to suggest that both with respect to our findings of the report for the administrative conference, and with respect to our own practice, that the fault for the delay is caused by the grantees before the Department of Education and before most other departments, is minuscule or insignificant as compared to the delays which are caused by agency personnel.

Agency personnel at the program office and the General Counsel's office, and in the Board's procedures themselves. So while I think the issue of delay is very significant, I think that there are reasonable ways to deal with that, which would not require the exclusion of rights afforded grantees currently under administrative regulation, under statute, and by the Constitution.

The last point that I would like to address before making myself available for any questions which you might have, based on this testimony or by my written statement is the issue of the distinction between a claim and a debt.

Like the spokesman for the Department of Justice, I would suggest that there is no clear definition at this point in time, either in practice or in law, and it is an important distinction which should be made, and it is an important distinction which should be made in a context of the proposed bill. The proposed legislation, excuse me.

My position, though, would be that whatever the distinction between the two, neither one occurs prior to the agency's having completed its own audit resolution procedure.

In the case of the Department of Labor, such procedure includes the hearing before an Administrative Law Judge, in the cases of the Departments of Health and Human Services and Education, the process includes a hearing before a Grant Appeals Board.

Many other agencies had similar-type procedures, either established formally through regulation, or established on an ad hoc basis. The point being, though, that whatever the procedure which is put in place, B, that that be completed before any offsets occur or any interest be assessed on debts.

We might add that with respect to those agencies which have not voluntarily—and I am using the word "voluntarily" in quotes—but which have not, of their own initiative, established such procedures, there are, we believe, very strong constitutional arguments that such procedures are mandated, and should be followed.

The primary concern that I have with respect to this timing issue, is a very real one at this point in time. And that is that within recent months, the administration has changed its policy with respect to the assessment of debt.

As I indicated in my statement, as of about a year ago, there seemed to be no question, or I should say the general practice clearly was that agencies would wait until the completion of their audit resolution process before assessing data in any form.

Several months ago, there was a change in this policy, a change participated, I believe, by the GAO report, which was referred to the subcommittee earlier today, the report on Federal agencies negligent in collecting debts arising from audits.

That report raised the concern of delay in the grant appeals procedures and suggested that the appropriate remedy should be to begin the assessment of interest at the time of the grant officer's determination of an audit disallowance.

And therefore, that assessment—that interest should be accruing throughout the entire audit procedure. Following the GAO report, the Office of Management and Budget, I believe, issues a directive or memorandum to the various grantmaking agencies and the various grantmaking agencies currently are in the process of implementing this.

The Department of Labor already has put in place such a change in policy. The Department of Health and Human Services has a notice of proposed rulemaking out on the issue.

What this change will mean is that the grantees now will be charged for interest from the date of the determination by the grant officer. In many cases, these grant officer's determinations represent hundreds of thousands or millions of dollars of costs which are questioned or disallowed in the audit process.

I might add that many of the States and localities which I believe are represented on this committee have, in fact, faced such disallowances, including the State of Texas. The figures that come out of these grant disallowances, as I suggested earlier, and most of the agencies then are subject to a long negotiation and appeal process, during which time our findings for the administrative conference showed the amounts were generally reduced considerably.

There were a number of serious issues raised which both parties found necessary to consider, and all in all, it was a resolution process which resulted in a very different final determination from the agency than from which they began.

So the current policy in our opinion has a negative impact in two respects. First of all, it has a very serious chilling effect upon the State and local governments, and upon other grantees to avail themselves of the appeal procedures which are mandated by law.

And second, that it, as I suggested earlier, it is simply unfair to have this interest accruing pending an appeal process over which the agency has substantial control.

I have cited a few examples in my prepared statement where there have been problems where the grantees have stood ready, willing and able to pursue an appeal, to, if necessary, pay back any disallowances, but where for one reason or another, the agencies involved have, in fact, stalled the proceedings, and have caused what could have been—caused a delay of, in some cases, several years.

With that, I would welcome any questions, and again express my appreciation for being here.

[The statement of Ms. Steinberg follows:]

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TESTIMONY
OF
ANN STEINBERG
ON
H.R. 4614 - DEBT COLLECTION ACT OF 1981

Before the
Subcommittee on Administrative Law and Governmental Relations
Committee on the Judiciary
United States House of Representatives

SUMMARY

1. This testimony is presented on the basis of experience acquired in the representation of grantees in Federal audit resolution proceedings, and a study on grant dispute procedures conducted on behalf of the Administrative Conference of the United States.

2. H. R. 4614 serves the laudable purpose of trying to clarify certain aspects of the Federal debt collection process.

3. However, H. R. 4614 does not recognize the nuances of the grants system and the potential havoc the legislation could bring.

4. In light of current grant audit resolution procedures, the following changes should be made to H.R. 4614:

(1) Section 3 should be amended to make clear that agency "claims" against a grantee do not arise until there is a final agency decision regarding the fact and amount of debt owed. Such decision may not be rendered until the grantee has completed the audit resolution process.

(2) Section 3 should be amended to make clear that, in the grants context, the remedy of administrative offset should be limited to situations in which the offset would not interfere with the purposes of ongoing grants.

(3) Section 4 should be amended to make clear that interest should not begin to accrue on grant-related debts until the grantmaking agency has made a final decision as to whether and how much of a debt is owed.

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TESTIMONY

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Before the
Subcommittee on Administrative Law and Governmental Relations
Committee on the Judiciary
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Washington, D.C.

Thursday, July 15, 1982

TESTIMONY
OF
ANN STEINBERG
ON
H. R. 4614 - DEBT COLLECTION ACT OF 1981

Before the
Subcommittee on Administrative Law and Governmental Relations
Committee on the Judiciary
United States House of Representatives
Washington, D.C.

Mr. Chairman and Members of the Subcommittee:

My name is Ann Steinberg. I am a member of the Washington law firm of Boasberg, Klores, Feldesman & Tucker, and author of a report to the Administrative Conference of the United States on Federal grant dispute resolution. I currently serve as chair of the American Bar Association Committee on Federal Grant Legislation, Policies, and Remedies, and deputy chair of the Federal Bar Association Committee on Grants.

I have been invited here today to testify on the possible effects of H.R. 4614 on the Government's collection of debts arising from Federal grants. The views that I express are mine alone.

During the past decade, my law partners and I have represented hundreds of grantees in audits and other disputes involving Federal grants. Our clients have included State and local governments, educational institutions, and community-based and other nonprofit organizations. We have represented grantees and grant applicants at virtually every stage of the grant process, including pre-award review, eligibility determinations, negotiation and approval of indirect cost rates and cost allocation plans, compliance reviews, post-grant audits and audit resolution. Several of our cases have involved potential debts to the Federal Government of millions of dollars. Our practice has been before many agencies, including the Departments of Labor, Health and Human Services, Education, Agriculture, Energy, and Housing and Urban Development, as well as the Environmental Protection Agency, Legal Services Corporation, and the now-defunct Community Services Administration.

In addition to our practice, during the past two years, our firm conducted a study on behalf of the Administrative Conference in which we looked at the grant dispute resolution procedures in 35 grantmaking agencies, 1/

1/ In addition to the agencies cited above, the study covered: Action, Department of Commerce, Department of Interior, Department of Justice, National Endowments on the Arts and Humanities, National Science Foundation, Smithsonian Institution, Department of Transportation, Department of Defense, Department of Treasury, Federal Emergency Management Agency, General Services Administration, Nuclear Regulatory Commission, Office of Personnel Management, nine Regional Commissions, Small Business Administration, Veterans' Administration, and Water Resources Council.

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and reviewed decisions and papers in each of the formal disputes brought before the agencies. In all, we reviewed approximately 1,700 grant-related disputes, the great majority of which involved audit disallowances or other monetary rulings which could have resulted in a debt owing to the Federal Government.

In light of our practice and study, I have a few comments regarding H.R. 4614, and its possible impact on the collection of grant-related debts. Before making these comments, however, it may be useful to review quickly the general nature of the grant audit resolution process.2/

The Grant Audit Resolution Process

Stage 1 of the process is the on-site review or field audit which is frequently conducted by auditors employed or contracted by the agencies' Offices of Inspector General. The auditors may have little prior contact with the grant programs or grantees they are auditing. With respect to large grant programs, it is not uncommon to see auditors' findings at this stage indicate hundreds of thousands or even millions of dollars of grant expenditures questioned or recommended for disallowance.

2/ The process described here may not apply to block grants authorized under the Omnibus Budget Reconciliation Act of 1981.

Stage 2 is the issuance of a final audit report by the agencies' Offices of Inspector General. These reports generally mirror the auditors' findings.

Stage 3 is a review of the audit reports by the Grant Officer, the person generally responsible for the administration of the grant program subject to audit. At the conclusion of this review, the Grant Officer generally issues findings and determinations which indicate the precise amount of grant expenditures disallowed. At the same time, the Grant Officer advises the grantee that the disallowances will be considered final and a debt owing to the United States unless the grantee requests review of the disallowances by the agency's grant appeal board or other review mechanism.

The duration and outcome of the Grant Officer's review varies considerably from agency to agency, program to program, and audit to audit. A recent GAO report indicated that it was not uncommon for some agencies to take up to 2 years to make this review, and to issue Grant Officer determinations.3/ Our practice suggests the same.

3/ "Federal Agencies Negligent in Collecting Debts Arising from Audits," Report by the Comptroller General to the Chairman, Legislation and National Security Subcommittee, House Committee on Government Operations, B-200473, Jan. 22, 1982 (hereinafter, "GAO Report"), p. 7.

With respect to Department of Labor grants authorized under the Comprehensive Employment and Training Act of 1973, as amended (CETA), Congress has expressed concern about the delays in this stage of the process, and, in 1978 amendments to the Act, required that the period of time between the agency's issuance of a final audit and the Grant Officer's findings and determinations regarding that audit be no longer than 120 days. DOL has striven to meet that deadline. In meeting the deadline, however, DOL officials have indicated to us that they sometimes have had to short-cut their review, and, in some cases, to end up with audit disallowances which they believed would be reversed upon further review.

Fortunately, for grantees, such further review occurs in Stage 4 of the typical audit resolution process in which grantees have an opportunity to seek review of Grant Officers' determinations by a grant appeals board, administrative law judge, or other review mechanism. These mechanisms were the primary subject of our study for the Administrative Conference, and deserve special note here. In the context of H.R. 4614 and this testimony, several points should be made:

First, this stage of review is typically the first chance for the grantee to have a disallowance reviewed by an

"impartial" agency official, someone who was not involved in the audit or the day-to-day supervision of the grant. Such review appears mandated by constitutional due process, and has been recommended for all agencies by the Administrative Conference.4/

Second, this stage of review has resulted in the reversal or withdrawal of tens of millions of dollars of disallowances made by grant officers, with reversals and withdrawals occurring in more than half of the appeals brought.5/

Third, generally without substantial fault of the grantee, this stage of review takes time. The GAO report showed an average of 18 months for cases handled at the agencies it studied, with some appeals taking several years. The ACUS report showed delays at least as long.

There are several reasons cited for the delays. Paramount among these are the agencies' limited resources,

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4/ Recommendation 82-2, "Resolving Disputes Under Federal Grant Programs" (Adopted June 17, 1982). (Copy attached.)

5/ These figures represent rough approximations of the aggregate sums of all cases decided in favor of a grantee and disallowances settled or withdrawn through informal negotiation between the parties.

the unavailability of staff and the apparent difficulties in coordination between the agency's program office, General Counsel's office, and grant appeals board, ALJ, or other review office. To be sure, in at least some of the appeals, delays are caused by grantees' actions. However, the agencies have shown that if they want to, they can deal with these delays -- by imposing strict deadlines, limiting discovery, defining the nature of written submissions and oral presentations, and, if necessary, dismissing an appeal by a grantee for want of timely action. Similar sanctions are rarely, if ever, imposed against the agency itself.

H.R. 4614

Against this background, H.R. 4614 serves the laudable purpose of trying to clarify certain aspects of the Federal debt collection process. From our perspective, the biggest problem with the legislation is that while its unrestricted scope includes audits and other grant-related debts, its provisions do not recognize the nuances of the grants system and the potential havoc the legislation could bring. Specifically, we are concerned that:

1. Section 3 does not define a "claim" in the grants context, or the point of time at which administrative offset could be implemented.

2. Section 3 does not make clear that, in the grants context, administrative offset should not be implemented if the offset would interfere with the purposes of ongoing grants.
3. Section 4 does not define "debt" in the grants context, or the point of time at which interest should begin to accrue.

Each of these points is discussed below.

Specific Concerns

1. Section 3 should be amended to make clear that agency "claims" against a grantee do not arise until there is a final agency decision regarding the fact and amount of debt owed. Such decision is not rendered until the grantee has exhausted audit resolution procedures, which, in most cases, should include notice and some kind of hearing.

Because there is no universally accepted definition of a "claim" in the grants context, there is concern that the bill's calling for administrative offset "at any time" could be interpreted by agencies to allow offsets prior to the completion of their audit resolution process. As indicated above, administrative appeals are the last stage of the audit resolution process in most of the major grantmaking agencies. The notice and hearing procedures provided by the appeal appear to be mandated by the Due Process Clause of the Fifth

Amendment to the United States Constitution, and, indeed, the Administrative Conference has recommended that all agencies establish and utilize such mechanisms in audit (and other grant dispute) resolution. (Recommendation 82-2, supra.) An agency's attempt to offset grant disallowances prior to the completion of this stage of audit review would be premature, and extremely harmful to grantees and the people they serve.

2. Section 3 also should be amended to make clear that, in the grants context, the remedy of administrative offset should be limited to situations in which the offset would not interfere with the purposes of ongoing grants.

In the GAO report cited above, the Comptroller General referred to "numerous Comptroller General decisions [which] have stated that offset should not be used where it would have the effect of defeating or interfering with the purposes of the grant." Report, p. 26. The decisions to which the Comptroller General referred provide that the appropriateness of the use of administrative set-off must be determined on a case-by-case basis, depending upon such factors as the objectives and purposes of the grant, the nature of the grant (e.g. was it a categorical or block grant), and the type of costs (direct or indirect) used for set-off. See, e.g., Comp. Gen. Decision Nos. B-171019, Dec. 14, 1976, and B-186166, Aug. 26, 1976, and Opinion B-182423,

Nov. 25, 1974. These factors should be considered in the regulations and standards called for in the last sentence of Section 3.

3. Section 4 should be amended to make clear that interest should not begin to accrue on grant-related debts until the grantmaking agency has made a final decision as to whether and how much of a debt is owed.

As with administrative offset, there is serious concern about at what point in the audit resolution process interest will begin to accrue. The concern is based on a recent change in Administration policy. Until recently, grantmaking agencies began to assess interest on outstanding audit disallowances at the end of the audit resolution process -- when there was final agency action and when the agency could take legal steps to collect its debt. As indicated above, in most agencies -- including the Department of Labor and Department of Health and Human Services -- this point in time was after the completion of an appeal before a grant appeals board, administrative law judge, or some other form of review.

In the past few months, this policy has changed. Agencies now are beginning to assess interest at the time of the Grant Officer's decision -- whether or not such decision is appealed by the grantee through the review processes

mandated by law. The apparent rationale for this change in policy is GAO's recent conclusion that the assessment of interest on audit findings under appeal would discourage "groundless" appeals and hasten the audit debt collection process. GAO report, supra., pp. 21-23.

GAO's conclusion in this regard -- and the Administration's response -- are an affront to the grantee community. Federal agencies themselves are primarily responsible for the current problems in debt collection; they should not be permitted to transfer that blame and use it as an excuse for imposing additional unfair sanctions upon State and local governments and other grantees.

By assessing interest pending the last stage in the agencies' audit resolution process, the new Administration policy has created a chilling effect upon grantees' exercise of appeal rights mandated by law. In disallowance proceedings (unlike some loan collections) grantees are not sitting around holding onto unexpended Federal dollars in order to collect high interest or investment dividends. The Federal money has been spent by the grantees, and, in most cases, spent on legitimate programs. The great bulk of audit disallowances are not caused by someone's taking grant funds and going to Bimini. Rather, disallowances frequently are

caused by the violation of essentially technical requirements, such as the failure to obtain prior approval for designated costs, and cost allocation. Whatever the cause, the reality is that grantees typically have little, if any, resources to pay back disallowances. They simply may not be able to bear the added burden of interest charges accrued during a lengthy appeal -- charges which, in some cases, may amount to hundreds of thousands of dollars. Some State and local jurisdictions have an added concern: By law, their funds may not be used to pay interest charges.

In addition to its chilling effect, the new debt policy seems intrinsically unfair in that grantees may be penalized for long appeal procedures over which Federal agencies have substantial control. As shown above, these appeals frequently take several months or years to complete. Our ACUS study and practice show that the grantee's responsibility for this type of delay is insignificant as compared to that of the agency. For example, our current case files show:

- o An appeal at the Department of Labor where a grantee has waited 2 1/2 years to have the agency sign off on a repayment plan, during which time the grantee has placed in a separate account all of the money due and owing, and we, as legal counsel, have petitioned the agency to act.

- Another DOL appeal in which the grantee has waited 16 months for the agency to advise an administrative law judge of the adequacy of documentation previously submitted.
- Two Department of Education appeals in which the grantees filed notices of appeals in December, 1981, and January, 1982, and were advised shortly thereafter that they soon would be contacted about the next stage of the procedure, but still are waiting to receive such word.

In each of these cases, one could say that the grantee was benefitting from the delay because it had received, in effect, an interest-free loan. The reality, however, is that frequently grantees don't want the delays. A pending audit matter may have adverse funding and political consequences which the grantee may want desperately to avoid.

The GAO and Administration concern that frivolous appeals are clogging the audit resolution system and seriously delaying debt collection does not seem to hold up under close scrutiny. As indicated above, our ACUS study showed that audit disallowances were reversed or withdrawn in more than half of the appeals brought. Many of the other appeals involved sophisticated questions of law or fact which

appeared appropriate for the kind of review contemplated by the agencies' last stage of audit resolution.

If, however, this Committee -- or the Administration -- continues to feel concerned about this problem, an appropriate remedy could be fashioned. For example, following an appeal, an agency could be authorized to seek interest for the appeal period upon a showing that the grantee's appeal was, in fact, frivolous. While such a case-by-case approach may create administrative problems, it nonetheless would be far more reasonable than the blanket policy adopted by the Administration and condoned by H.R. 4614.

To summarize with respect to interest: Granting agencies currently are assessing interest prior to the completion of their audit resolution procedures. Such policies seem intrinsically unfair, and cause substantial harm to State and local governments and other grantees. As presently drafted, H.R. 4614 permits such action. We urge amendment.

I appreciate the opportunity to appear before you. Thank you.

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OFFICE OF
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RECOMMENDATION 82-2

RESOLVING DISPUTES UNDER FEDERAL GRANT PROGRAMS

(Adopted June 17, 1982)

Federal grants to governments, public service institutions and other non-profit organizations have been conspicuous instruments of federal policy since the 1930s. During the past two decades the growth in the number of federal grant programs, and the level of resources distributed through grants, has evidenced the expanded influence of the federal government on the activities of these entities.

Ensuring proper conduct of federal assistance programs has assumed increasing importance as these extraordinarily varied programs have proliferated. Federal domestic grant spending, which now exceeds $100 billion annually, promotes major social goals. Grants, and the activities they assist, often are crucial to beneficiaries whom Congress intends to aid and to recipients who carry out program goals. For instance, over one-quarter of all expenditures by state and local governments now come from federal grants, and thousands of smaller institutions depend on these funds for their very existence.

Each of these grants represents an understanding on the part of the federal government and the grantee that is in the nature of a contractual commitment. The number and intensity of disputes over grants have risen in recent years, following both the increased reliance on federal grants by other institutions and a growing federal budget stringency that has decreased the generosity of federal funding and increased the rigor of audit review. These disputes run the gamut from those that involve nearly pure questions of federal policy and agency discretion to those that affect substantial grantee expectations or invoive particularized adverse determinations about individuals.

Disputes may arise initially over the making or withholding of a grant, the amount of funds committed, or the terms and conditions imposed. Once the grantee has undertaken the project, controversies may occur over what actions the grantee has been funded or authorized to take, the grantee's relationships with program beneficiaries, subgrantees, or subcontractors, and other incidents of ongoing project administration, including grantee compliance with the terms and conditions of the grant. Disputes may arise in the form of audit disallowances. Finally, an agency may choose to terminate or debar a grantee or refuse to provide continued funding based on the agency's belief about the adequacy of a grantee's performance of previous projects.

In prior recommendations, the Administrative Conference has called on all federal grantmaking agencies to adopt informal procedures for hearing and resolving complaints by the public that a recipient's administration of a grant fails to meet federal standards (Recommendations 71-9 and 74-2). While some agencies have carried out these recommendations, many still do not afford grantees or other persons affected by the

operation of federal domestic grant programs any channels for impartial consideration of their complaints. Congress has provided few directives in this area, except as to a few agencies like the Departments of Education and Labor, and actual agency practices in handling grant disputes have varied considerably.

This recommendation goes beyond the Conference's prior statements to focus on the rights that agencies should provide to grantees and applicants for grant funds. Few agencies afforded grant recipients any substantial appeal rights until the mid-1970's; some still fail to do so. In recent years, several agencies have begun to create processes to resolve some types of disputes with grantees and certain types of grant applicants. Their experience indicates that these appeal procedures, while sometimes flawed, have been useful for protecting grantees' rights and for helping agencies to avert needless and troublesome litigation, improve oversight of significant administrative problems, ensure that policies are applied fairly and consistently, and make decisions on a rational, justifiable basis.

Given the importance of these programs, the nature of the interests involved, public policy factors, and considerations of fairness enunciated in recent constitutional decisions, the Administrative Conference believes that all grantmaking agencies should maintain procedures to hear appeals regarding certain kinds of agency actions. For example, grantees generally have a special interest in debarment, termination, suspension, or certain kinds of renewal or entitlement situations. Also, disputes regarding some expenditure disallowances arising from audits, or other cost and cost rate determinations, may be crucial to a grantee, requiring payback of large sums. Because of the potential significance of these types of actions, and their relative infrequency, agencies should establish appeals procedures for them. On the other hand, thousands of applications for competitive discretionary grants are denied each year, and the imposition of any broad appeal hearing requirement for this type of action could be quite burdensome to some agencies.

While the variety and complexity of federal domestic grant programs (and grant disputes) ultimately renders uniform procedural prescriptions inappropriate, this recommendation sets forth some general considerations that agencies should find useful to guide them in assessing the adequacy of their present methods of resolving grant appeals. The Conference believes that an agency should have considerable latitude to tailor procedures to the characteristics of its programs and grantees, and in the great bulk of appeals agencies need not match the protections required in adjudications governed by the Administrative Procedure Act, 5 U.S.C. §§ 554-557. The recommendation begins with, and centers on, the notion that informal action — including opportunities for conversations with relevant program officials and their superiors, mediation or ombudsman services, and similar devices — should form the core of the resolution process. Still, agencies should be aware that at least some disputes may arise, especially in post-award cases involving contested issues with substantial funds at stake, in which some kind of more formal agency review should be made available.

In making this recommendation, the Conference is aware that some agencies maintain appeal procedures which are more elaborate than those described below but provide equal or greater safeguards and protective measures. This recommendation is not intended to cast any doubt on the propriety of such procedures, or to assess the need therefor in light of specific programs or agency goals and concerns.

RECOMMENDATION

I. SCOPE AND INTENT OF THE RECOMMENDATIONS

The recommendations in Part II concern procedures for disputes involving domestic "grantees" and "vested applicants." A "grantee" may be a non-profit or community service organization, a unit of state or local government, a school, corporation or an individual who has executed a grant agreement or cooperative agreement with a federal agency. A "vested applicant" is one who is entitled by statute to receive funds, provided the applicant meets certain minimal requirements; or one who applies for a noncompetitive continuation grant, and has been designated in some manner as the service deliverer for a designated area or is operating within a designated multi-year project period. Part III deals with agency-level processes for handling complaints by disappointed applicants for discretionary grant funds. The procedures recommended herein are not intended to displace existing hearing mechanisms already required by law in some programs. They apply only to grant programs carried on primarily within the United States.

II. COMPLAINTS BY GRANTEES AND VESTED APPLICANTS

A. INFORMAL REVIEW AND DISPUTE RESOLUTION PROCEDURES.

1. Each federal grantmaking agency should provide informal procedures under which the agency may attempt to review and resolve complaints by grantees and vested applicants without resort to formal, adjudicatory procedures. The informal procedure could take several forms, including, for example, advance notice of adverse action and the reasons for the action, opportunity to meet with the federal officials involved in the dispute, review by another or higher-level agency official, or use of an ombudsman or mediator. Attempts to resolve disputes under these informal procedures should be pursued expeditiously by the agency within a definite time frame. Notwithstanding these time limits, a complainant's invocation of more formal appeal procedures should not prevent further efforts to settle, mediate, or otherwise resolve the dispute informally.

2. The existence of informal review procedures should be made known to affected grantees and vested applicants in the manner described in paragraphs 3 and 12, below. Agencies should encourage their program and decisional officials to resolve grievances informally, and provide training to improve their abilities to do so. In undertaking such training, agencies should work with those agencies that already have begun to make use of mediation and other conciliatory approaches, such as the Departmental Grant Appeals Board in the Department of Health and Human Services, and existing groups with expertise in these methods of dispute resolution.

B. NOTICE OF AGENCY ACTION.

3. Upon issuance of an agency decision which (if not appealed) represents final agency action, each grantmaking agency should provide prompt notice of its action to the affected grantee or vested applicant. If the action is adverse to a grantee or vested applicant, the agency's notice, at a minimum, should provide a brief statement of the legal or factual basis for the action; state the nature of any sanctions to be imposed; and describe any available appeal procedures, including applicable deadlines and the name and address of the agency official to be contacted in the initial stages of an appeal.

C. ADMINISTRATIVE APPEAL PROCEDURES.

4. Each federal grantmaking agency should provide the additional opportunity for some type of administrative appeal in at least certain kinds of grant-related disputes. This appeal may be conducted orally or in writing, depending on the nature of the dispute, and may be expedited where appropriate. In determining whether an administrative appeal should be afforded and the form of any such appeal for particular classes of disputes, agencies should consider the probable impact of the adverse action on the complainant, the importance of procedural safeguards to accurate decisionmaking in each class of dispute, the probable nature and complexity of the factual and legal issues, the financial and administrative burden that would be imposed upon the agency, the need for a perception of the government's fairness in dealing with grantees and vested applicants, and the usefulness of appeal procedures to give feedback on administrative problems.

5. In light of the factors described in paragraph 4, each federal grantmaking agency should provide the opportunity for some kind of administrative appeal with regard to adverse actions involving:

a. The performance of an existing grant, including disputes involving debarment, termination, suspension, voiding of a grant agreement, cost disallowances, denials of cost authorizations, and cost rate determinations;

b. The denial of funding to applicants for entitlement grants, including disputes involving the applicant's eligibility, amount of funding to be received, and application of award criteria or pre-established review procedures; and

c. The denial of applications for noncompetitive continuation awards where the denial is for failure to comply with the terms of a previous award.

6. Where an opportunity for an administrative appeal is afforded, the agency should take into account the factors set forth in paragraph 4 and select from among the following forms of proceedings to provide the one most appropriate to the particular case:

a. Decision based on written submissions only;

b. Decision based on oral presentations;

c. Decision on written submissions plus an informal conference or oral presentation; or

d. Full evidentiary hearing.

Where a hearing or conference is useful to resolve certain issues, the agency may limit the hearing to those issues and treat remaining questions less formally. In addition, the agency should provide some form of discretionary expedited appeal process for disputes. In such proceedings, the agency may, for example, shorten time deadlines, curtail record requirements, or simplify procedures for oral or written presentations.

7. At a minimum, these administrative appeal procedures should afford grantees and vested applicants the following:

a. Written notice of the adverse decision (See paragraphs 3 and 12);

b. An impartial decisionmaker (for instance, a grant appeals board member, a high level agency official, a person from outside the agency, an administrative law judge, or certain other agency personnel from outside the program office), with authority to conduct the proceedings in a timely and orderly fashion;

c. Opportunity for the agency, complainant and any other parties to the appeal promptly to obtain information from each other, and to present and rebut significant evidence and arguments;

d. Development of a record sufficient to reflect accurately all significant factual submissions to the decisionmaker and provide a basis for a fair decision; and

e. Prompt issuance of a written decision stating briefly the underlying factual and legal basis.

8. Each federal grantmaking agency should determine in advance, and specify by rule or order, the scope of the authority delegated to the decisionmaker in administrative appeals. For example, agencies should specify in advance whether the decisionmaker has the authority to review the validity of agency regulations or the consistency of agency actions with governing statutes.

9. Agencies should accord finality to the appeal decision, unless further review is conducted promptly pursuant to narrowly drawn exceptions and in accordance with preestablished procedures, criteria and standards of review. If the decisionmaker is delegated, or asserts, authority to review the validity of agency regulations, the agency head should retain an option for prompt final review of the decision in accordance with applicable procedures.

10. Once these administrative appeal procedures are invoked, the decisionmaker should discourage all ex parte communications on the appeal unless the parties consent to such communications. Any ex parte communications that do occur should be disclosed promptly, and placed in the appeal record.

11. Agencies should encourage prompt decision of appeals by creating time limits or other guidelines for processing grant disputes, and should pay particular attention to resolving appeals over decisions regarding renewal and continuation grants in a timely manner. These timetables might be fixed generically or in accordance with the complexity of particular cases. Decisionmakers' compliance should be monitored by the agency pursuant to a regular caseload management system.

D. PUBLIC NOTICE.

12. Grantmaking agencies should give advance notice and afford an opportunity for public comment in developing informal review and administrative appeal procedures. Agencies should ensure that available procedures are made known to grantees and vested applicants. Notice of such procedures should be published in the Federal Register, codified in the Code of Federal Regulations, and included in grant agreements and other appropriate documents, in addition to the individual notice described in paragraph 3.

13. Agencies should collect in a central location, and index, those written decisions made in administrative appeals. These decisions should be made available to the public except to the extent that their disclosure is prohibited by law. Whenever a grantee or vested applicant cites a previous written decision as a precedent for the

agency to follow in its case, the agency should either do so, distinguish the two cases, or explain its reasons for not following the prior decision.

III. COMPLAINTS BY DISCRETIONARY GRANT APPLICANTS

A. INFORMAL REVIEW PROCEDURES.

The Conference previously has called on agencies to develop criteria for judging discretionary grant applications and to adopt at least informal complaint mechanisms to ensure compliance with these criteria and other federal standards. (See Recommendations 71-9 and 74-2) The Conference reiterates its belief that these procedures can benefit agency performance.

B. PUBLIC NOTICE.

Each federal grantmaking agency should ensure that available informal review procedures and administrative appeal procedures are made known to grant applicants. Notice of such procedures should be published in the Federal Register, codified in the Code of Federal Regulations, and included in application materials and other appropriate documents. (See also Recommendations 71-4 and 71-9)

IV. IMPLEMENTATION OF RECOMMENDATION

Each federal grantmaking agency should, within one year of the adoption of this recommendation, report in writing to the Administrative Conference the steps the agency intends to take, consistent with the above guidelines, to improve its dispute resolution process.

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BIOGRAPHICAL STATEMENT OF ANN STEINBERG

LAW PRACTICE

BOASBERG, KLORES, FELDESMAN AND TUCKER
Washington, D.C., 1975-present
Partner, specializing in Federal grant law. Practice includes representation of State and local governments, colleges and universities, and community-based and other non-profit organizations which are recipients of Federal grant funds. Administrative and Federal court litigation.

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
Washington, D.C., 1973-1975
Staff attorney. Practice included representation of community-based organizations in litigation involving federal employment and training programs, equalization of municipal services, school finance, migrant labor conditions, and the New York Times' publication of advertisements for employment in South Africa.

CONSULTING AND TEACHING

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
Washington, D.C.
Chief consultant on Federal grant dispute resolution, 1980-present

GRANTS MANAGEMENT ADVISORY SERVICE
Washington, D.C.
Chief consultant on Federal grant disputes, 1976-present

NATIONAL CENTER FOR ADMINISTRATIVE JUSTICE
Washington, D.C.
Instructor of course on Federal grant litigation, 1980 and 1981.

Lecturer on Federal grant law at AMERICAN UNIVERSITY, GEORGE WASHINGTON UNIVERSITY INSTITUTE FOR ADVANCED STUDIES, COLLEGE OF ST. THOMAS (Minnesota), 1978-present.

Lecturer/panel discussion leader at seminars and workshops on Federal grant requirements sponsored by the United States Department of Justice, American Bar Association, Federal Bar Association, National Assistance Management Association, National Association of Counties, National Association of State Economic Opportunity Offices, National Community Action Agencies' Executive Directors Association, National Community Action Foundation, Association of Farmworker Opportunity Programs, La Cooperativa Campesina de California

PUBLICATIONS

Federal Grant Disputes: A Report and Recommendations to the Administrative Conference of the United States (Govt. Printing Office: Summer 1982)

Federal Grants Management Handbook, chapters on Disputes, Appeals, and Remedies; Sources and Importance of Grant Requirements; and an Overview of Federal Nondiscrimination Requirements (Grants Management Advisory Service: 1978-present)

Federal Grants Reporter (Federal Grants Advisory Service: 1975-1978)

A Study of State Legal Standards for the Provision of Public Education (National Institute of Education/GPO: 1974)

(Untitled article), The Grantsmanship Center Newa (The Grantsmanship Center: Fall 1982)

BAR ASSOCIATIONS AND AFFILIATIONS

Member, Bars of the District of Columbia, Commonwealth of Pennsylvania, and State of Maryland

American Bar Association: Chair of Committee on Federal Grant Legislation, Policies and Remedies, 1981-present

Federal Bar Association: Deputy Chair of Committee on Federal Granta, 1980-present

District of Columbia Bar (Unified): Treasurer (elected by the membership), 1981-preaent; Chairperson, Division IV Steering Committee on Courts, Lawyers, and the Administration of Justice (1979-80); Chairperaon, Select Committee on the U.S. District Court for the District of Columbia (1978); Chairperson, Ad Hoc Committee on Lawyer Licenaing and Specialization (1979); Member, Standing Committee of the Judicial Conference of the District of Columbia on Pro Se and Pro Bono Matters.

Waahington Council of Lawyera: Member of Board of Directors, 1980-81.

Women'a Legal Defense Fund: Member of Board of Directors, 1981-1982

Women's Bar Association of the Diatrict of Columbia and the State of Maryland, 1978-present

National Assistance Management Asaociation: Member of Executive Committee and Board of Directors, 1978-preaent; chairperaon, 1979 Symposium on Grant Requirements

PRIOR EMPLOYMENT

ADMINISTRATIVE OFFICE OF THE UNITED STATES SUPREME COURT
Washington, D.C., 1972
Law clerk.

CHILDREN'S LEGAL DEFENSE FUND
Washington, D.C., 1971
Law clerk.

PUBLIC DEFENDER SERVICE
Washington, D.C., 1970-1971
Law clerk.

U.S. OFFICE OF EDUCATION
(Division of Compensatory Education, Title I, ESEA)
Washington, D.C., 1968, 1970-1971
Program specialist.

EDUCATION

Georgetown University Law Center, Washington, D.C., J.D., 1973

Pennsylvania State University, University Park, Pennsylvania, B.A. (with distinction), 1970

State College Area High School, State College, Pennsylvania, graduated 1966

PERSONAL

Married, two children.

Mr. HALL. Thank you, Mrs. Steinberg.

Without objection, your prepared statement will be made a part of this record. I agree wholeheartedly with one statement that you have in your prepared statement, and that is on page 11, where you state that the Federal agencies themselves are primarily responsible for the current problems in debt collection.

I think that is an absolute truism, and I believe that the testimony that we have heard before this subcommittee, it is only recently that there is an effort, and I think along with an effort on this bill that we are considering here today, to try to put a little force behind the collection of some of these sums that are outstanding and due and owing by various and sundry agencies to the Government.

I do have some question with one of the statements you have, though, that indicates that any sum that may be owing out of one area of disbursement should not be, paid out of some ongoing grant.

On page 9, talking about section 3, you say that section 3 should be amended to make clear that in the grants context, the remedy of the administrative offset should be limited to situations in which the offset would not interfere with the purposes of ongoing grants.

As I understand that, it is your position that if a grant has been made to one entity of a government—and that sum has been misappropriated in some way, willfully or otherwise, that if there is another grant that might be made, that it should not be offset from that second grant.

Why? If I am reading you correctly.

Ms. STEINBERG. Yes, I must say, with all respect, that you are not reading me correctly, that this was drafted not in the context of this discussion this morning, but rather in the context of the Comptroller General decisions which have addressed the issue, and which have used the language that I use as the standard of whether or not an administrative offset should be imposed.

The issue that you are raising I think is a very serious issue, as to whether, for example, or the example raised by the Justice Department counsel, if a disallowance coming out of the Department of Labor could be offset against the Department of Health and Human Services.

I don't know what the answer to that is, legally. I know that in the civil rights area, that the issue has come up with respect to the enforcement of title VI of the Civil Rights Act of 1964, and there has been some statutory provisions there relevant, but basically the courts have drawn certain lines at which point enforcement against violations in one program, one federally funded grant program can be imposed against another federally funded grant program.

I would suggest to the counsel of the committee that that might be one area to look at in terms of the legal ramifications. I could not say to you that I would absolutely be against such kind of an interagency enforcement effort.

I would, however, I think, make two points. First of all, that if, in terms of enforcement, the Federal Government is to be considered as a whole entity, that then, in the whole area of fiscal re-

sponsibility and fiscal accountability to the Federal Government that the Federal Government be considered an entity.

And what I mean by this, and there was some discussion of this during the break, that many of the disallowances which are charged to State and local governments and other grantees, go not to the question of whether or not the money was taken and spent for unauthorized purposes in the sense of someone going to Bimini or taking the money and just using it for personal advantage.

Most of the disallowances deal with whether or not very complicated Federal cost principles have been followed, and one of the most popular sources of disallowance for the auditors comes in the area of cost allocation.

The question being the State of Texas receives $100,000 from the Department of Labor, and $100,000 from the Department of Health and Human Services. Should it have spent $75,000 for its staff charge to one Department, and $25,000 to another Department; $75,000 to the Department of Labor, $25,000 to the Department of Health and Human Services, or should the breakout have been 50-50?

That is the issue, and many of the cost disallowance cases, and the auditors come down and they say that the State of Texas was wrong, that it shouldn't have been 75-25, it should have been 50-50, and therefore, we are going to disallow the extra $25,000 that came out of one grant, and as the current law stands, the State of Texas would be required to pay back the $25,000, even though no one can test the fact that that money went for generally acceptable purposes.

My argument, it may be somewhat convaluted, but my point is I think that what we have argued continuously is that the Federal Government must be considered as an entity, and that to be fair to these State and local jurisidictions, if you are going to consider this as an entity, and to be dealing with some of these cost allocations in a way favorable to them, then it seems to me, it is perfectly reasonable to come back in terms of enforcement and saying, "You owe the Federal Government *x* amount of dollars."

But if you are going to separating the Departments in terms of imposing cost allocation responsibilities and putting the burden upon the State and local government to be distinguishing between one agency and another, then it seems to me, that it may be somewhat unfair to have an overall enforcement effort.

I realize that is a somewhat convaluted answer, but there seems to be a certain inequality in the way that that——

Mr. HALL. Well, I know of some instances in the State of Texas, I can recall one to mind now—and not call the name—where a school district received a substantial sum of money, and it was later determined that that money had been wrongfully expended by a school board and a superintendent, several hundred thousands of dollars.

And appropriate proceedings were brought against that school board to recoup or recover, and some of the additional subsequent title money was withheld from that particular district pending the repayment of that money.

Are you stating that that is not a proper procedure—if it is determined that the money was unlawfully spent, or was willfully

misappropriated in some way—to withhold money from a school district or some other entity that has received money from the Government and some subsequent program—that that school might be otherwise entitled to receive?

Ms. STEINBERG. No, I am not saying that, Mr. Hall. I am saying that, first of all, it must be duly determined that, in fact, the school district owes the money, that there must be some kind of due process proceeding, whereby it is determined that there is, in fact, a debt owing to the Federal Government and that the debt is the appropriate amount.

And that then the question of whether or not there is authority to offset, as has been mentioned previously, there is a case currently pending before the Supreme Court on this issue, and there are various legal interpretations as to whether or not such remedy would be authorized. I think that there is a certain degree of irony in that in many cases, grantees prefer that type of remedy, because, in fact, they don't have cash to pay back to the Federal Government, and that this kind of offset arrangement would be useful in terms of clearing their name and their responsibility.

Mr. HALL. Oh, I think you are right, I agree with that completely. I represented some school districts prior to coming up here, and I know of one instance where what you just stated was an established fact.

The thing that gives me some concern about much of the testimony that we hear is that there seems to be a conscious effort, to make it appear that the Federal Government is doing something that borders on ethics in trying to collect money that has been given by the Government to some entity, that has not been spent properly.

There might have been an overpayment, whatever the occasion may be. Everyone connected with this subcommittee would insist upon due process. Everyone on this subcommittee, would be in favor of a fair manner in which these debts are collected if they are due.

But I don't believe that it is true, and I am not saying it is reflecting upon your testimony solely, because it has permeated all of this testimony today. I just don't believe that it is always true that trying to collect a debt that is legally due to the United States Government puts the Government in a position of being suspect. We have heard testimony today that tended to do that. I don't agree with it.

I noticed in your testimony that there is some question about the definition of a claim, that the section should be amended to make clear that agency claims against a grantee do not arise until there is a final agency decision regarding the fact in the matter of the debt owed.

And such decision is not to be rendered until the grantee has exhausted audit resolution procedures, which in most cases, should include notice of some kind of hearing. I don't believe that there is any provision in 4614 that denies a person a hearing. I don't know that there is any provision in this bill that states that the Federal Government will take deliberative, arbitrary action against any person or entity to collect money.

There may be some areas that need to be amended, but I can see where there could be long and drawn-out procedures for the purposes that you and I have mentioned earlier, for an entity not to be required to pay back a sum of money.

And of course, during that period of time, the Government, or—the taxpayers, I should say—are undergoing the burden of being strapped with additional sums that should be paid that they have not been paid.

I think everyone is concerned with equity here. And equity, I guess, is in the eyes of the beholder in many instances, but I think that what you are essentially saying, is that this bill has merit, but it should have some clarification as to some rough edges that you perceive to be here now.

And that your testimony is not the type that would put the government is a suspect position because it is trying to collect a legitimate debt that is owed.

Ms. STEINBERG. Mr. Chairman, that is exactly my position, that I do not suggest the suspicion that you referred to earlier. I think, to the contrary, that the Federal Government has a debt which is due and owing by the State and local government or by anyone else, they should be making all legal efforts to collect it.

I am a Federal taxpayer, and I very much have that concern. I am a lawyer, though, and my only concern is that it be done legally. And the two legal issues which have arisen in the context of grants, one is the very fundamental issue of due process, which I agree wholeheartedly with the sentiment of the committee that it clearly applies in these situations, and I think that that view is supported without question by the case law that exists, and yet I must say that that has not always been, and in fact, currently is not the view of many of the Federal grant-making agencies, that the administrative conference study that we just completed, and the process of making recommendations involved a number of situations where quite the opposite was argued by the agencies, that due process did not apply, and that they could very freely assess disallowances and assess interest against State and local governments and other grantees without concern for a hearing.

The upshot of that process, I might add, was a series of recommendations which were adopted, I beleive, uniformly, unanimously, by the administrative conference, and which are included in my statement.

So——

Mr. HALL. Let me interrupt for one moment, and ask you a question. You made this comment twice. You say that there have been people connected with the Department of Education that have made public statements that due process is not applicable to a situation that we are talking about?

Ms. STEINBERG. I have been informed that in the course of litigation, that attorneys for the Department of Education have argued that due process does not apply in the context——

Mr. HALL. Do you know the cases and the names of the attorneys, and if you do, would you, furnish them to this committee?

Ms. STEINBERG. Yes; I shall.

The attorneys——

Mr. HALL. Go ahead.

Ms. STEINBERG. The other points that I wish——

Mr. HALL. You indicate that you are looking back at one of them.

Ms. STEINBERG. Yes, I am. The attorneys are in this room. They are here from the Commonwealth of Pennsylvania. Margaret Hunting is here——

Mr. HALL. Representing the Department of Education?

Ms. STEINBERG. No, no. They are the attorneys for the Commonwealth of Pennsylvania who have been involved in litigation against the Department of Education.

Mr. HALL. I see. While why don't you at the conclusion of this testimony, or at some subsequent time, give to us the names of the attorneys who made those statements, when they were made, and if you have a transcript or a statement of facts of the testimony where that was made, I would like to have a copy of that.

Ms. STEINBERG. Fine.

Mr. HALL. Or this committee would like to have a copy of that.

Ms. STEINBERG. The other points—I would be happy to do that.

The other points that I would just like to make briefly in response to your statement a few moments ago, was that the concern that the debts be collected, but that they be done legally. One with respect to due process, and the second with respect to notice.

There have been a series of cases which I suppose is a form of due process. There have been a series of cases culminating in the Supreme Court decision of Pennhurst, and I can provide the committee with full cite, which says that when a State or local government or other entity enters into a grant agreement, it must be given full and explicit notice of the terms and conditions of that agreement.

And one of the arguments in the litigation which is now pending before the Supreme Court with respect to the offset authority is that the State and local governments involved in that litigation did not have any full notice that offset could be used as a remedy against them.

I am not here to testify as to whether or not that is a winning argument or whether it could be justified, just raising it for the committee's attention.

The second general point that I wish to make in response to your comment was that I do not think that the bill as currently drafted precludes the consideration of due process remedies in any way. I am concerned, though, based on our experience, that it could be interpreted by agencies to allow them to avoid their due process obligations.

The use of the phrase, for instance, "at any time," suggests to me that that is language which could be used by administration representatives to argue that they could offset a claim even before there had been any due process hearing.

I might make one comment, and these are in no particular order of importance. The only time that I am aware of an administrative agency hitting head on the question of when a claim becomes a claim in the audit resolution process was a situation involving, of all things, the allowance of attorneys' fees in a grant appeal process, and issue somewhat near and dear to my own heart.

And the issue that came up there was that the Office of Management and Budget cost principles allow attorneys' fees, with the ex-

ception that they are not allowed for the prosecution of "claims" against the Government.

The question went to the Department of Health and Human Services as to whether the representation of the grantee before the Grant Appeals Board in the last stage of the audit resolution process was such a claim.

And the question was asked of someone named Henry Kirshenmann, who at that time was the head of the Office of Cost Determination at the Department of Health and Human Services. He now is, I believe, at the Assistant Secretary level.

In any event, he issued a written ruling that that proceeding was not at the stage at which a claim had been presented, that the proceeding was still in a situation where the agency was making a determination as to what its final stance would be, and that therefore, attorneys' fees were allowable, because the parties were not engaged in the prosecution of a claim.

As far as—I would be happy to provide that correspondence to the committee, if you decide it to be relevant. As far as I know, that is the only time in which the agency has addressed the issue specifically as to whether or not a claim——

Mr. HALL. If you have that, make it available to us.

Ms. STEINBERG. The last point, then, in response to your comments, the concern about the seemingly interminable delays in the appeal process, and the fact that if money is owing to the Federal Government, we as taxpayers, should not be required to wait years and years.

And I would only repeat a statement I believe I made perhaps somewhat hurriedly previously, which is, I altogether agree with you that if the debt is there, I think the Federal Government has a responsibility to act expeditiously to collect it. But I think the burden is on the agency to make sure that this process is expedient.

The Federal Government has many weapons at its disposal to make sure that State and local governments, and other entities respond promptly. They have used these weapons—I shouldn't say weapons, I should say means—they have used them on various occasions. They know how to use them, and that if there is to be a grant appeals procedure, as is required by law, it can, in fact, be expedient, and it can, in fact, not result in the seemingly interminable delays that are now in place in the agencies, and that, in fact, the grantees, in many cases, desire such expedition.

The grantees that I represent find the whole audit disallowance process terribly onerous. They must commit a great deal of their own resources to this process. They must live under this cloud of disallowance, it may affect other funding sources. They don't like the delay. It is not something that they strive for generally.

And so, I would urge that the responsibility for the delay and the path to correction lies with the agencies.

Mr. HALL. Thank you for your very, very cogent testimony. I appreciate it very much.

Ms. STEINBERG. Thank you.

Mr. HALL. That concludes our testimony for today, and this subcommittee stands adjourned to the call of the Chair.

[Whereupon, at 12:45 p.m., the subcommittee adjourned subject to the call of the Chair.]

99-306 O - 83 - 23

ADDITIONAL MATERIAL

DEPARTMENT OF HEALTH, EDUCATION, & WELFARE
U. S. OFFICE OF EDUCATION

In the Matter of:

TITLE I AUDIT HEARING BOARD

Appeal of:

THE STATE OF PENNSYLVANIA

Docket No. 10(25) 76

Audit Control No. 50000-03

Tuesday, December 7, 1977

Room 4173
400 Maryland Avenue, SW
Washington, D. C.

The hearing was convened, pursuant to notice, at 10:15 a.m.

BEFORE: ROBERT SANER II, Chairman of the Panel

OLCOTT SMITH

CHARLES M. HANSEN

APPEARANCES:

On behalf of the State of Pennsylvania:

PATRICIA DONOVAN
General Counsel
Pennsylvania Department of Education

MARGARET HUNTING
Co-counsel for the Commonwealth

DONNA NELSON
Assistant Attorney General
for the Commonwealth

On behalf of DHEW:

ROBERT ARNOT
Attorney Advisor

TITLE PAGE (Continued)

On behalf of DHEW (continued):

PHILIP H. ROSENFELT
Chief Title I and Title V
Audit Proceedings Branch
Co-counsel for Deputy Commission

STEVE FRIED
Attorney Advisor

JANET KNIGHT
Attorney Advisor

ALSO PRESENT:

Cecilia Ford
Counsel to the Audit Board

David S. Pollen
Chairman, Audit Board

Martin Horowitz
Assistant Counsel
School District of Philadelphia

John Hyams
Senior Program Officer
Pennsylvania Department of Education

William M. Dallam
Chief, Division of Compensatory Programs
Pennsylvania Department of Education

John Rodriguez
Associate Commission
Office of Education
CEP/BESE/OE

whether or not the funds were or were not properly spent?

MS. DONOVAN: If the Panel would provide us with the necessary due process protections and give us an administrative procedure type of hearing we would be willing to have the factual matters laid out fully and have the Deputy Commissioner advised as to how to proceed if the decision were against us.

MR. SMITH: I guess by an administrative procedure -- proceedings you mean the burden would be on the Office of Education.

MS. DONOVAN: To at least start out with what we have done wrong.

MR. ARNOT: I would like to respond to that.

CHAIRMAN SAHER: Do I understand we will hold a separate presentation on the burden of proof?

MS. DONOVAN: Yes we are.

[redacted] First of all I would like to clarify the Deputy Commissioner has made his final audit determination. And will not once again review his initial decision. But the decision of this Panel may be reviewed by the Commissioner of Education and he will ultimately decide what disposition to make of the findings.

There is some confusion over semantics or labels here. What Ms. Donovan has asserted the type of actual finding the Panel does must be of a certain nature must

be of an adjudicatory nature, must be of a full-blown process nature, must be subject to the APA.

This Board has issued general provisions describing the nature of the hearing. It provides a hearing. It is not an APA hearing. It is a due process hearing. [redacted]

A number of times in Pennsylvania's brief and in that case the Court held APA applied even where the words "on the record" were not in the statute because the individual, Wong, was facing deportation at the hands of the Government and was constitutionally entitled to a due process hearing. That is not the type of case here.

The type of administrative hearing varies from circumstance to circumstance. [redacted]

To respond to the specific point, the key element here, the burden of proof, has a specific element of the type of case later.

MS. DONOVAN: I must admit we have some serious disputes about whether the State is protected by the fifth amendment. I think it is an open issue I do not

think it has been determined by the Courts or even law scholars.

[redacted]

CHAIRMAN SAWYER: Did I read your brief correctly that the State has a vested property right in these funds once the grant has been made and what is involved is a Government taking, trying to get that property right back away from you?

MS. DONOVAN: I think we did consider it. I think it was our position. We do not deny we have our obligations in the nature of a trust too. But insofar -- I do not believe the legislative history or the practice ever contemplated massive refund. There was a presumption everyone would act correctly.

All OE got from the LEA's and all OE got from us was the signed assurance of a public official that we would comply with the statutes and the regulations and we have no reason right now to believe they did not to be honest.

We have nothing but an assertion that is unsupported by unauthenticated documents that there was any misappropriation. I would like to also ask for verification of some kind or other on the distinction between the Deputy Commissioner and the Commissioner and

Ms. Donovan: . . .

Deputy Commissioner is the Deputy Commissioner for Education.

How the Office of Education get two opportunities to make two final decisions and when do we have an adjudication that is appealable?

It is my contention we do not have an appealable adjudication until these proceedings are completed and the Commissioner has made a final decision. The we become, if the decision goes against us, an appellant in whatever forum we are in. We either have a final adjudication, or we do not and it is our position we do not.

[redacted] ✓

The Deputy Commissioner is the Deputy Commissioner for the Bureau of Elementary and Secondary Education who we have been representing since the beginning of this appeal.

The Deputy Commissioner for BESE as it has been abreviated has made his decision. The Deputy Commissioner for the Bureau of Elementary and Secondary Education has ✓ determined Pennsylvania would have to refund money.

Pennsylvania has appealed from the determination. ✓

The Office of Education has [redacted] ←

[redacted] provided this forum for the ← state of Pennsylvania to present evidence as to why the Deputy Commissioner's decision should be nullified or set aside. Prior to the Commissioner of Education,

Mr. Boyer, making a final decision as to how the Agency is going to proceed, if Pennsylvania does not abide by the recommendation and pay the funds, is that is their final decision.

But I think that has to be made clear: When you have an adjudication, it is not the question an adjudication is not necessary to exhaust your administrative remedies in terms of what you would have to do to show you have tried everything you have to exercise your right of appeal, which you have done.

[redacted] ←

This Panel is here in an advisory capacity to hear your rebuttal on the findings of fact and the auditor's conclusion.

CHAIRMAN SAUER: As a point of information, if the State of Pennsylvania had chosen not to take advantage of this forum and appealed the final letter of determination of the Deputy Commissioner, would the matter then have gone to the Commissioner, the Commissioner would have made a decision, or would the Deputy Commissioner at that point institute whatever demand or offset proceedings.

MR. ARNOT: The Deputy Commissioner has demanded a refund. The notice creating this Board provides an appeal procedure which [illegible] an intermediate fact

Ms. Hunting: . . .

hearing. This is simply advise to the Commissioner. It appears to me from reading the statutes on this regard a hearing is provided for. We do have a right to some kind of hearing.

It does not say on the record, but some kind of hearing and we later have an appeal to the third circuit. It seems to me if we are appealing this to the third circuit we are doing this with no record whatsoever, if we are not granted a full evidentiary hearing.

[redacted] I would like to briefly respond by stating [redacted]

Those provisions concern withholding of funds or disapproval of an application, not the recovery of misspent Title I funds. [redacted]

only in the case of withholding of funds or denial of approval of application.

Are we required to provide a hearing and do you have the right to appeal to the circuit court? If you want to argue by analogy to those type situations and say we ought to have a hearing here, I say that [redacted]

you are receiving a hearing. The authority I would indicate I would provide in the fifth amendment the due process clause in the fifth amendment I can provide that if it is desired.

The courts have in a number of instances ruled without being overruled that states are not persons within the meaning of the fifth amendment and cannot assert fifth amendment claims of entitlement to due process or fifth amendment entitlement on behalf of their citizenry.

MS. DONOVAN: May I ask one question. Suppose the Panel did everything I ask them to accept say the Commissioner had no authority and said we would have a full evidentiary hearing and will follow administrative procedure type proceedings in the hearing. There is no appeal because it is a refund case and not a withholding?

You say there would be no right of appeal to the third circuit?

[redacted]

MR. ROSENFELT: It carries us forth when there is an automatic appeal to the circuit court and that is not in this situation.

MS. DONOVAN: If that is the case I have to tell you this is not a very congenial atmosphere, damned if you do, damned if you do not. Why don't you use us in federal court. We will see you there. [illegible].

Statement of
American Textile Manufacturers Institute
Before the
House Judiciary Subcommittee on Administrative
Law and Governmental Relations
June 16 and 17, 1982

Mr. Chairman, the American Textile Manufacturers Institute (ATMI) appreciates this opportunity to submit testimony again in support of legislation which provides for payment of losses incurred as a result of the tris ban. ATMI is the national, central trade association which represents spinners, weavers, knitters, tufters, dyers and finishers that manufacture 85% of the U.S. textile production.

ATMI has been a supporter of similar legislation over the past several years since the Consumer Product Safety Commission (CPSC) took action to ban tris-containing products on April 8, 1977. Similar legislation was passed overwhelmingly by the 95th Congress and by the Senate in the 96th. This reflects the growing mood of the nation, which demands for the government to be responsible for its regulatory actions. We commend the Congress for efforts in the past to remedy this unfair situation.

In 1971 the Department of Commerce (DOC) promulgated stringent flammability regulations which made it necessary to treat children's sleepwear fabrics with a chemical fire retardant. This action was taken over the strong objections of industry calling for additional time to develop and test products. The DOC regulations greatly affected the makeup of the children's sleepwear market by virtually eliminating cotton and blends of cotton and synthetic fibers, the traditional fabrics used for children's

sleepwear. These fibers were replaced with tris treated flame retardant fabrics made primarily from polyester, acetate and triacetate.

The government's tris ban on April 8, 1977 conflicted directly with the 1971 DOC action requiring treatments on fabrics to achieve flame retardancy.

The tris legislation does not automatically allow full reimbursement to companies affected by the irresponsible acts of the government. It simply gives the U.S. Court of Claims jurisdiction to hear cases brought up by those who have been injured. The court will then recommend to Congress whether payment should be made and, if so, in what amounts. Therefore, this legislation is not precedent-setting as such, but is simply an indication that the government wishes to be fair with the industrial community.

In earlier versions of this legislation, the Congressional Budget Office has suggested that the passage of the bill might result in overall savings to the government, since litigation would be consolidated. We support this concept.

The children's sleepwear industry has suffered irreparable injury because of these totally conflicting Federal regulations. Therefore, ATMI supports this tris indemnification legislation because of the moral right of the government to be responsible for its actions. Government should not be allowed to wash its hands of the problems it has created and leave the entire cost of this fiasco to be borne solely on the shoulders of industry.

We are concerned with the first sentence of paragraph (e) of H.R. 9011 because it could be interpreted to mean that once the government has paid the claim of an apparel maker, it could then bring an action to recover money from the fabric manufacturer who supplied the apparel maker. In the first sentence of paragraph (e) of H.R. 9011, the United States is "subrogated to the claimant's rights to recover losses or to assert a claim against any person or organization relating to the subject matter of such claim paid by the United States." We would recommend that the language of the first sentence of paragraph (e) of H.R. 9011 cited above be followed by a comma and language to the following effect be inserted at the end thereof:

> "..., except that there shall be no right of recovery, by subrogation or otherwise, against any person, partnership, corporation, or association described in subsection (a) of this Act, if such person or entity has standing to bring a valid claim under this Act."

Therefore, we urge passage of this legislation with our recommendations on "subrogation" as suggested in the above mentioned language.

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